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In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE TERRITORY OF HAWAII, APPELLANT,
v.
OSAKA MANKICHI. } No. 219.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF HAWAII.

SUPPLEMENTAL BRIEF FOR APPELLANT.

By EDMUND P. DOLE.

In the Supreme Court of the United States.

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I.

Annexation was by contract, and was not a mere taking by Congressional authority, as claimed by appellee.

The Provisional Government of Hawaii was created in January, 1893, mainly with a view to annexation to the United States. The Provisional Government and President Harrison's administration agreed upon the terms of a treaty, which was submitted to the United States Senate for ratification. Before it could be acted upon President Harrison's term of office expired, and President Cleveland withdrew the treaty.

There being no prospect of annexation for at least four years, a more permanent form of government for

the Republic of Hawaii was established in 1894. Article 32 of its constitution was as follows:

> The president (of the Republic of Hawaii), with the approval of the cabinet, is hereby expressly authorized and empowered to make a treaty of political or commercial union between the Republic of Hawaii and the United States of America, subject to the ratification of the senate.

The terms of a treaty of annexation were subsequently agreed upon between President McKinley's administration and President Dole's administration. They were ratified in the Hawaiian senate in September, 1897. Later it was thought advisable to adopt the form of a joint resolution, and the Newlands resolution, socalled, *was identical in its terms with the proposed treaty ratified by the Hawaiian senate.*

A joint resolution of Congress annexing a foreign country is of no legal validity *per se.* It requires the assent of the other party, which makes it a contract. It became a contract when it was acceded to by the Hawaiian Government in the proceedings set forth on pages 8 and 9 of my printed argument, or else by the assent theretofore expressed. All the elements of a contract existed. It was a contract and nothing but a contract.

II.

In interpreting this contract, the intention of the parties is the polestar of the court. If the written instruments, taken by themselves, are ambiguous, the court will take into account everything that can shed

light upon the transaction; its history, existing conditions, the advantages which the parties expected to realize by the contract, the evils which they expected to escape, and the constructions which they themselves put upon it by their contemporaneous and subsequent acts. In considering such a contract, the court will also take into account considerations of justice and humanity and well-settled principles of international law, and will not lightly presume that a civilized government intentionally surrendered the elemental rights of its citizens to protection from crime. The law is made for man, not man for the law, and a construction which would leave society powerless to protect itself from murderers, rapists, robbers, and other like criminals, and powerless even to detain the prepetrators of such outrages, is not to be favored.

III.

If the fifth and sixth amendments to the Constitution of the United States became applicable to the Hawaiian Islands with the surrender of national sovereignty, then, for a period of nearly two years, the people of those islands did not have, and could not have, any legal machinery for the protection of life and property or for the punishment of criminals, or even for their detention.

For more than half a century Hawaiian law had provided that:

> In all cases of arrest for crimes or misdemeanors cognizable before a jury, the magistrate in whose jurisdiction or on whose warrant

the accused was arrested shall, upon the appearance of the accused, proceed to consider whether there is probable cause to believe that a jury would, upon the evidence adduced, convict the accused of the offense with which he is charged, he shall reduce to writing the substance of the evidence adduced, with the names of the witnesses, and if, in his opinion, the testimony do not warrant commitment for trial, he shall release the prisoner, noting that fact upon his docket; but if, in his opinion, there is probable cause to believe that conviction would take place before a jury, he shall make out and deliver to a constable a mittimus, which may be in the following form: * * *

In all cases of offenses against the laws of this Republic, triable only by a court of record, the accused shall be arraigned and prosecuted by an indictment by a legal prosecutor of the Republic, as soon after the commitment of the offense of which he is accused as may be expedient; provided always that the presentation of an indictment against an accused shall not be deferred beyond the term of the court having jurisdiction of the alleged offense next succeeding the commitment of the accused for trial by a magistrate having competent jurisdiction therefor. And the trial shall then and there be proceeded with, unless the same shall be postponed by the court as hereinafter provided.

The necessary bills of indictment shall be duly prepared by a legal prosecuting officer and be duly presented to the presiding judge of the court before the arraignment of the

accused, and such judge shall, after examination, certify upon each bill of indictment whether he finds the same a true bill or not.

The failure to prosecute upon the indictment, if found at the ensuing term of the court, unless the venue be changed, or unless the cause be postponed by the court, or a failure to sustain the indictment upon the law involved, or a verdict of not guilty by the jury, or the successive disagreement of two juries impaneled to try the cause, shall operate as an acquittal of the accused, and the court shall order his discharge from custody. (Secs. 610, 615, 616, and 617 of the Penal Laws of 1897.)

The foregoing provisions, in substance, were in force for half a century.

For more than half a century Hawaiian law (except from 1842 to 1847, when capital cases required unanimous verdicts) provided that—

No jury, for the trial of any case, civil or criminal, shall be less than twelve in number; but when nine of such jury shall agree upon a verdict, they may render the same, and such verdict shall be as valid and binding upon the parties as if rendered by all twelve. (Sec. 1345, Civil Laws, 1897.)

All native Hawaiians, accused of any crime, shall be tried by a jury composed entirely of natives, and all foreigners, by a jury composed entirely of foreigners, who shall be drawn from the array of native and foreign jurors respectively returned to serve at the term. (Sec. 1332, Civil Laws, 1897.)

Racial juries were instituted with the beginning of the jury system in the Hawaiian Islands, and were continuously in force until the taking effect of the organic act.

Hawaiian law also provides that—

> The common law of England, as ascertained by English and American decisions, is hereby declared to be the common law of the Hawaiian Islands in all cases, except as otherwise expressly provided by the Hawaiian judicial precedent, or established by Hawaiian national usage: *Provided, however, that no person shall be subject to criminal proceedings except as provided by the Hawaiian laws.* (Sec. 1109, Civil Laws, 1897.)

It is obvious that the foregoing provisions are foreign to the grand and petty jury system contemplated by the fifth and sixth amendments to the Constitution of the United States. These amendments are not automatic. The Hawaiian courts could not work under them without the aid of appropriate legislation. The Newlands resolution provided no such legislation and made no reference to these amendments. When national sovereignty was surrendered the next regular session of the legislature was about eighteen months in the future, and Congress had adjourned. Assuming that it was advisable to legislate, it would have been two or three months before appropriate legislation could have been passed and have taken effect. Meanwhile, the people of Hawaii (assuming that the fifth and sixth amend-

ments were then applicable) would have been without legal protection from crime, and without legal power to detain criminals. When the next regular session of the Hawaiian legislature approached President McKinley, by virtue of the powers vested in him by the Newlands resolution, postponed its meeting for a year in order that the situation might remain unchanged until Congress should provide a new scheme of government. I have quoted his order in full on page 11 of my first brief. Under these circumstances the legislation to make the fifth and sixth amendments operative for the indictment and trial of accused persons was impossible, and if they were applicable to the Hawaiian Islands at that time, *they operated simply as a guaranty of immunity from punishment or detention for any and every crime that might be committed.*

Moreover, if legislation had been possible, intelligent legislation would have been impossible, for the status of the islands was merely temporary, and no one could know what their permanent status would be.

IV.

If there had been legal machinery for judicial work under the fifth and sixth amendments, it must have failed for want of duly qualified citizens of the United States to operate it. No one can be a citizen of an American State or of an American Territory unless he is a citizen of the United States. The fifth and sixth amendments contemplate common-law grand and petit juries, and no others. No one can be a grand

or petit juror pursuant to these amendments unless he is a male citizen of the United States of full age and a resident of the judicial district in which the court is held. There is not a line in the Newlands resolution which can be construed as conferring citizenship upon anyone in Hawaii. The organic act conferred this nearly two years later. Section 4 provides:

> That all persons who were citizens of the Republic of Hawaii on August twelfth, eighteen hundred and ninety-eight, are *hereby* declared to be citizens of the United States and citizens of the Territory of Hawaii.

Neither the Hawaiian courts nor the Hawaiian legislature had authority to make American citizens. There were no American citizens in Hawaii prior to June 14, 1900, except those who were such by birth or by American naturalization. According to the official census of 1896, they numbered 2,266; less than one-tenth of the white population of the islands. The islands were divided into five judicial circuits or districts. The American population was mostly in the first circuit. The other four circuits, with a population of 68,815, contained only 658 American citizens; 24 of the 658 lived on remote islands, and for practical purposes were beyond the reach of summons. Counting out women and children, old men, sick men, absentees, professional men, and Government officials, exempt by law from jury duty, and men who had not taken the oath of denization required by Hawaiian law, there were probably less than 200 citizens of the

United States eligible and available for jury duty under the fifth and sixth amendments in four circuits, with an aggregate population of 68,815.

The fifth circuit, with a population of 15,392, contained only 60 male citizens of the United States, including boys; not more than 25 or 30 men, at the most, eligible and available for jury duty under the fifth and sixth amendments, yet the law required that 36 should be summoned for the petty jury, and there can not be a grand jury of less than 13.

The law does not countenance the absurd or sanction the impossible. The language of Mr. Justice Field in *In re Ross* (140 U. S., 464), is strikingly applicable to these conditions:

> And, besides, their enforcement abroad in numerous places, where it would be highly important to have consuls invested with judicial authority, would be impracticable from the impossibility of obtaining a competent grand or petit jury. The requirement of such a body to accuse and try an offender would, in a majority of cases, cause an abandonment of all prosecutions.

The strength, the fundamental idea of the jury system, whether grand or petit, is that it represents the people. The petit jury has been spoken of as—

> The twelve invisible judges whom the eye of corruption can not see and the influence of the powerful can not reach; for they are nowhere to be found until the moment when, the balance of justice being placed in their hands, they

hear, weigh, determine, pronounce, and immediately disappear and are lost in the crowd of their fellow-citizens.

The jury system is designed as a safeguard. Its chief function is to distribute the administration of justice, to divide the responsibility among all classes, and not to concentrate its burdens and responsibilities upon a few. Where jurymen must be drawn from a nationality numbering less than one in a hundred of the population, the representation of the public, which the jury system is designed to embody, does not and can not exist. Assuming that legal machinery could have been provided for drawing and impaneling grand juries during this transition period, such procedure would have violated the genius and spirit of the Constitution of the United States. The letter of the Constitution is not to be strained to the destruction of its spirit. "The letter of the law killeth; the spirit giveth life."

If the fifth and sixth amendments were in force during the transition period, neither the substantial interests of the Hawaiian Islands nor the people born there, nor nineteen-twentieths of the people born elsewhere, could have been represented by any jury. If Hawaii had been a subjugated but still hostile country such a course might have been justified by military law; but Hawaii came to the United States with open arms, "confiding in the honor, justice, and friendship of the American people," and believing that it had retained such local rights of citizenship as were essential to rep-

resentative government in local affairs and the preservation of law and order.

V.

It is inconceivable that either the Republic of Hawaii or the United States should have intended to subject the people of Hawaii to conditions incompatible with the protection of life and property and preservation of civilized government. We come then to an examination of the contract with the strongest presumption that no such outrage was contemplated by either party.

The Newlands resolution declared that, "until Congress shall provide for the government of such islands, all the civil, judicial, and military powers exercised by the officers of the existing government in said islands shall be vested in such person or persons, and shall be exercised in such manner, as the President of the United States shall direct; and the President shall have the power to remove said officers and fill the vacancies so occasioned. The existing treaties of the Hawaiian Islands shall forthwith cease and determine, being replaced by such treaties as may exist, or as may be hereafter concluded, between the United States and such foreign nations. The municipal legislation of the Hawaiian Islands, not enacted for the fulfillment of the treaties so extinguished, and not inconsistent with this joint resolution, nor contrary to the Constitution of the United States, nor to any existing treaty of the United States, shall remain in force until the Congress of the United States shall otherwise determine. Until legislation

shall be enacted extending United States customs laws and regulations to the Hawaiian Islands, the existing customs relations of the Hawaiian Islands with the United States and other countries shall remain unchanged. * * * So long * * * as the existing government and the present commercial relations of the Hawaiian Islands are continued, as hereinbefore provided for, said government shall continue to pay the interest on said debt. * * * No Chinese, by reason of anything herein contained, shall be allowed to enter the United States from the Hawaiian Islands. The President shall appoint five commissioners, * * * who shall, as soon as reasonably practicable, recommend to Congress such legislation concerning the Hawaiian Islands as they shall deem necessary and proper."

The surrender of sovereignty on the part of the Republic of Hawaii and its acceptance on the part of the United States was in the following language:

Minister Sewall said—

> Mr. President, I present you a certified copy of a joint resolution of the Congress of the United States, approved by the President on July 7, 1898, entitled "Joint resolution to provide for annexing the Hawaiian Islands to the United States." This joint resolution accepts, ratifies, and confirms, on the part of the United States, the cession formally consented to and approved by the Republic of Hawaii.

President Dole replied:

> A treaty of political union having been made and the cession formally consented to by the

> Republic of Hawaii having been accepted by the United States of America, I, now, in the interest of the Hawaiian body politic, and with full confidence in the honor, justice, and friendship of the American people, yield up to you, as the representative of the American people of the United States, the sovereignty and public property of the Hawaiian Islands.

Whereupon Minister Sewall said:

> Mr. President, in the name of the United States, I accept the transfer of the sovereignty and property of the Hawaiian Government.

In his proclamation, President McKinley, after reciting the terms of the joint resolution, declared "that the civil, judicial, and military powers in question shall be exercised by the officers of the Republic of Hawaii as it existed just prior to the transfer of sovereignty, subject to his power to remove such officers and to fill vacancies. * * * That the municipal legislation of Hawaii (subject to the exceptions set forth in the joint resolution) was to remain in force until the Congress of the United States should otherwise determine." The President ended his proclamation with the significant statement, "Under these various provisions the government of the islands will proceed without interruption."

All this proves beyond question that there was a contract, not a mere assumption of sovereignty on the one hand and a submission on the other without contract guaranties. And it shows that both parties understood and intended that the functions of civilized

government should continue in the Hawaiian Islands, *judicial as well as other functions*, on substantially the old lines until a new scheme of government should be provided for. The words "nor contrary to the Constitution of the United States" must be construed in connection with the context, with the transaction as a whole, the obvious intention of the parties, and in the light of all surrounding facts and circumstances.

VI.

The construction which both parties put upon the contract is beyond dispute. It seems to me that it is conclusive.

Shortly after the surrender of national sovereignty the American members of the Commission appointed by President McKinley arrived in Honolulu. Within a day or two after their arrival they requested the views of the Hawaiian Government in regard to its political status. Hon. W. O. Smith, then attorney-general, requested me to write an opinion. It may be sufficient for me to say that the opinion which I wrote was in line with the position which I take before this court. It was submitted to the Commissioners as the opinion of the Hawaiian Government. It met the approval of the commissioners. It was unanimously sustained by the supreme court of the Republic of Hawaii. As my opinion it is of little consequence, but as the official opinion of the Hawaiian Government, approved by the Commission appointed by President McKinley and in line with President McKinley's Administration, it has an important bearing upon the

understanding of the parties. Two opinions rendered to the United States Government by Attorney-General Griggs were along the same lines, and are very material as showing the understanding of the Federal Government. They are found in volume 22, Opinions of Attorneys-General, pages 153 and 249. I quote from them as follows:

> The resolution of Congress which, with the corresponding action of the Republic of Hawaii, annexed the Hawaiian Islands to the United States, operated for international purposes to make those islands part of the territory of the United States. But when territory is acquired by treaty or conquest, or otherwise, its relations to the nation acquiring it depend upon the laws of that nation, unless controlled by the instrument of cession. It may for certain purposes remain foreign temporarily or permanently, and is not presumed to be at once put upon the same footing as all other territory of the nation, but rather the contrary. When, therefore, Florida had been ceded and fully transferred to the United States, its ports were regarded as foreign within the meaning of our revenue laws. (*Fleming et al.* v. *Page*, 9 How., 617.) This being so, it seems to me we should be able to find some provision in the resolution annexing the Hawaiian Islands indicating an intention to change the relations of our tonnage-tax laws to Hawaiian ports and vessels coming from them, or those relations should be regarded as continuing. Such an intent I do not find in the general declaration annexing the islands as

> part of the territory of the United States. That declaration, there having been no treaty, is intended to have the effect of a treaty of cession merely. It is the act whereby the islands become, in a broad sense, subject to American sovereignty. How that sovereignty will regulate their status, with regard to itself and its laws, is not thereby intended to be determined. Neither do I think that the express declaration that our land laws and certain other laws shall not apply to the islands carries the implication that other laws shall apply to them upon the principle, often misunderstood, that the expression of one thing often excludes another. On the other hand, the resolution is replete with indications that temporarily the relations of the two countries are to continue practically unchanged. Even some of Hawaii's relations with other countries are so to continue; its government is still to exist and collect its revenues; its laws are to remain in force, however at variance with our laws, and the powers—civil, judicial, and military—exercised by its officers are still to be exercised. It is, moreover, plainly apparent that Congress regards the establishment of an American government for and the extension of American laws to the islands as matters to be attended to in the future upon a consideration of the wide separation of the two countries in locality and character.

And in a later opinion (Id., 249), referring to the former opinion, he says:

> And I reach the conclusion in that opinion that Congress in respect to this and other ques-

tions has affirmatively indicated its intent that our laws (and I may now add the Hawaiian laws) are to remain generally undisturbed by the annexation of the islands until "Congress shall provide a government for such islands," or until a commission shall advise and Congress enact "such legislation concerning the Hawaiian Islands as they shall deem necessary and proper."

VII.

The construction which Congress subsequently put upon the contract by the act organizing the Territory is also very important. The title of the act is "An act to *provide* a government." This expresses the idea that a new government was to take the place of the old one. Section 2 declares:

> That the islands acquired by the United States of America under an act of Congress entitled "Joint resolution to provide for annexing the Hawaiian Islands to the United States," approved July seventh, eighteen hundred and ninety-eight, shall be known as the Territory of Hawaii.

The future tense is used. The islands were to be *thereafter* the Territory of Hawaii.

Section 3 declares "that a territorial government is hereby established." *Hereby—by this act—not a pre-existing thing.*

Section 4 declares:

> That all persons who were citizens of the Republic of Hawaii on August twelfth, eighteen

> hundred and ninety-eight, are hereby declared to be citizens of the United States and citizens of the Territory of Hawaii.

Hereby declared—by this act—not a preexisting condition.

Section 5 declares:

> That the Constitution and, except as herein otherwise provided, all the laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States.

This is an extension of the Constitution. There is nothing of like character in the Newlands resolution.

Section 8 declares:

> That the offices of President, minister of foreign affairs, minister of the interior, minister of finance, minister of public instruction, auditor-general, deputy auditor-general, surveyor-general, marshal, and deputy marshal of the Republic of Hawaii are hereby abolished.

Are hereby abolished—present tense—a distinct recognition of the Republic of Hawaii, with its then existing *President and* ministry (not as a sovereign nation, but as a dependency) up to the taking effect of the organic act.

Section 10 declares:

> That all rights of action, suits at law and in equity, prosecutions, and judgments existing prior to the taking effect of this act shall continue to be as effectual as if this act had not been passed; and those in favor of or against

> the Republic of Hawaii, and not assumed by or transferred to the United States, shall be equally valid in favor of or against the government of the Territory of Hawaii. All offenses which by statute then in force were punishable as offenses against the Republic of Hawaii shall be punishable as offenses against the government of the Territory of Hawaii, unless such statute is inconsistent with this act, or shall be repealed or changed by law. * * * All criminal and penal proceedings then pending in the courts of the Republic of Hawaii shall be prosecuted to final judgment and execution in the name of the Territory of Hawaii; all such proceedings, all actions at law, suits in equity, and other proceedings then pending in the courts of the Republic of Hawaii shall be carried on to final judgment and execution in the corresponding courts of the Territory of Hawaii; and all process issued and sentences imposed before this act takes effect shall be as valid as if issued or imposed in the name of the Territory of Hawaii.

"All * * * prosecutions * * * existing prior to the taking effect of this act shall continue to be as effectual as if this act had not been passed." This is a plain expression of the intent and understanding of Congress that the new order of judicial proceedings should date only with the taking effect of the organic act.

Section 68 declares:

> That all the powers and duties which, by the laws of Hawaii, are conferred upon or required

> of the President or any minister of the Republic of Hawaii (acting alone or in connection with any other officer or person or body) or the cabinet or executive council, and not inconsistent with the Constitution or laws of the United States, are conferred upon and required of the governor of the Territory of Hawaii, unless otherwise provided.

Present tense again; also an intimation that some of the powers and duties by the laws of Hawaii conferred upon and required of the President and other officials of the Republic of Hawaii during the transition period might be no longer exercised under the full extension of the Constitution of the United States provided for by section 5 of the organic act.

Section 83 declares:

> That the laws of Hawaii relative to the judicial department, including civil and criminal procedure, except as amended by this act, are continued in force, subject to modification by Congress or the legislature. The provisions of said laws or any laws of the Republic of Hawaii which require juries to be composed of aliens or foreigners only, or to be constituted by impaneling natives of Hawaii only, in civil and criminal cases specified in said laws, are repealed, and all juries shall hereafter be constituted without reference to the race or place of nativity of the jurors; but no person who is not a male citizen of the United States and 21 years of age and who can not understandingly speak, read, and write the English language shall be a qualified juror or grand juror

> in the Territory of Hawaii. No person shall be convicted in any criminal case except by unanimous verdict of the jury. No plaintiff or defendant in any suit or proceeding in a court of the Territory of Hawaii shall be entitled to a trial by a jury impaneled exclusively from persons of any race. Until otherwise provided by the legislature of the Territory, grand juries may be drawn in the manner provided by the Hawaiian statutes for drawing petty juries.

This section, recognizing the old procedure as an existing legal institution, abolishes it and substitutes the common-law grand and petty jury system, providing a way in which grand jurors could be drawn.

Section 100 provides:

> That for the purposes of naturalization under the laws of the United States, residence in the Hawaiian Islands prior to the taking effect of this act shall be deemed equivalent to residence in the United States and in the Territory of Hawaii, and the requirement of a previous declaration of intention to become a citizen of the United States and to renounce former allegiance shall not apply to persons who have resided in said islands at least five years prior to the taking effect of this act; but all other provisions of the laws of the United States relating to naturalization shall, so far as applicable, apply to persons in the said islands.

This section, taken in connection with section 4, negatives the theory that citizens of the Republic of

Hawaii became citizens of the United States by the mere surrender of Hawaiian national sovereignty.

It seems to be clear that the Executive and Legislative branches of the Federal Government and all branches of the government of the Republic of Hawaii took the same view of the contract.

The appearance of the Federal Department of Justice in behalf of the appellant in this case demonstrates that the present Administration takes the same view of the contract that President McKinley's Administration took.

VIII.

The intent of the parties, taking the contract as a whole, and reading it in the light of local conditions, and of preceding contemporaneous and subsequent history, is clear. It must be upheld unless it violates the Constitution of the United States.

What was the Republic of Hawaii after the surrender of national sovereignty? It was neither a State nor a Territory in the American sense of the word. It was not a colony. It was a dependency. It was still known as the Republic of Hawaii. In all official correspondence with the United States it was so recognized. It had surrendered its national sovereignty absolutely and without reserve, and at the same time and by the same contract it reserved to itself its customs relations with the United States and with other foreign nations, and also its postal system—two of the most important functions usually exercised only by sovereign powers, and which can not be exercised by

any State of the American Union. It retained its own coinage and currency. It surrendered title to the public property, but on conditions that public lands and the proceeds of public lands should be forever held for the use and benefit of the people of the islands, and for the time being it retained its own system of land laws.

So far as official titles and duties were concerned the most visible change was that the American minister became presidential agent and other foreign diplomats became consuls. Not a single change was make in the personnel of officials, and they were not even reappointed, but were simply continued in office. The wheels continued to move without friction on the old tracks. All this was according to Mr. McKinley's declaration and the understanding of both parties to the contract. "Under these various provisions the government of the islands will proceed without interruption."

Now, in the light that history sheds over the whole transaction, what do the words "nor contrary to the Constitution of the United States" mean? I think they relate only to provisions applicable *ex proprio vigore*. There are no words in the Newlands resolution purporting to extend the Constitution, or any provisions thereof. There is nothing in the Newlands resolution extending any provision which did not go there of its own force as to territory subject to the dominion of the United States. Hawaii was in a transition state—a dependency—subject to the dominion of the United States, and I think the words

"nor contrary to the Constitution of the United States" were not intended to limit its powers as such, but on the contrary were words of enlargement, intended to leave it in possession, with certain specified exceptions, of all the powers the American Congress could leave it in possession of consistently with a surrender of sovereignty to the United States.

One party to the contract was a government which at that time was running smoothly, and was the evolution of a century under conditions of which the people of the United States and their representatives in Congress as a rule knew but little. The American Government has always been Hawaii's best friend. It did not intend to strike down civilization in those islands, to paralyze their courts, to inaugurate a carnival of crime, and to force honest people to appeal to "Judge Lynch." Congress could not accept a surrender of national sovereignty, and at the same time authorize its new dependency to violate the Constitution of the United States. It can not under any circumstances or anywhere authorize any violation of the Constitution, but acts inconsistent with certain provisions of the Constitution are not a violation thereof where those provisions do not apply and are not in force. Congress wanted to feel its way, to do the islands good, and not harm, and to make as few changes as possible, until it had collected sufficient information to make them intelligently. To put the meaning and intent of Congress into colloquial language it said: "This contract binds both of us. Our treaties with other

nations must be respected, and we can not authorize you to violate any provision of the Constitution of the United States which applies to you. We can not waive any provision which applies to you of its own force, but, with this understanding, go right along as you are going until we make up our minds what ought to be done." Viewed in this light the various provisions of the Newlands resolution are consistent with each other, and with the understanding of both parties.

As Mr. Justice White remarked in *Downes* v. *Bidwell*, whether certain provisions of the Constitution of the United States are applicable to the annexed territory depends upon its situation and its relations with the United States.

The status of the Republic of Hawaii, after annexation, was unique and transitory. Nothing of the kind has occurred before in the history of the United States, and probably not in the history of the world. In some respects it had far greater powers than a State of the American Union can have; in other respects its powers were less. It was a dependency. It was not yet an integral part of the United States, although it was subject to the dominion of the United States. In many respects its functions were still those of a foreign state, and it had no voice or vote in the councils of the nation, and could not speak there even in its own behalf.

From the beginning of my connection with this question I have based my opinion that the fifth and sixth amendments to the Constitution of the United

States were not applicable mainly upon the reasoning of Chief Justice Marshall in *Barron* v. *Baltimore* (7 Peters, 243). There was nothing in the text of the Constitution of the United States or in the text of the amendments in question in the slightest degree indicating or intimating that they did not apply to States as fully as to the Federal Government, but Chief Justice Marshall, in view of the history of the adoption of those amendments and of surrounding facts and circumstances, held that they were not intended to apply to States, and that, therefore, they did not apply to States.

His reasoning in this case has stood the test of seventy years. In my first brief I cited fifteen cases in which it has been reaffirmed by this court. I believe that the reasoning of this great case, so many times reaffirmed, applies with far greater force to Hawaii during the transition period than to the States themselves. In my first brief I have gone into this case at length. I do not propose to retraverse the same ground, but I do feel that the strength of my position is *Barron* v. *Baltimore*. The history of the annexation of Hawaii, and the facts and circumstances connected with it, sharply distinguish the Mankichi case from the other insular cases, and bring it within the rule of constitutional construction laid down by Chief Justice Marshall.

In my first brief and in my printed argument I tried to analyze the insular cases, together with other cases, but I found nothing, either in the majority or in the

dissenting opinions, which seems to me in conflict with the position I take before this court. The situation of Hawaii and its contract relations with the United States must be taken into account in determining whether the fifth and sixth amendments were applicable during the transition period, and when this is done the rule of construction established in *Barron* v. *Baltimore* answers the question in the negative.

I wish to suggest a further view which seems to me important. When a question involving the application or construction of the Constitution of the United States arises in a State or Territorial court, an appeal lies to this court. The Supreme Court of the United States has final jurisdiction. The fact that the supreme court of the Republic of Hawaii had final jurisdiction of all cases that properly came before it during the transition period, illustrates in the strongest light how far the status of the islands was from being that of an American Territory.

It suggests another question of such importance that the court may think it, standing by itself, decisive of the whole matter. Osaki Mankichi was convicted in a court over which this court had no appellate jurisdiction. He had a right of appeal to a higher court—the supreme court of the Republic of Hawaii, over which this court had no appellate jurisdiction. He was convicted and sentenced according to the principles of law adjudicated and settled by the supreme court of the Republic of Hawaii, not only prior to annexation, but also during the transition period. How can this court

undo the work of a court over which it had no more jurisdiction than it has over the British House of Lords? The supreme court of the Republic of Hawaii was the court of last resort, the only court to which Mankichi could have appealed. I submit that his conviction according to the interpretation of the court of last resort was a finality.

I have tried to outline the conditions and the history leading up to and culminating in the annexation of the Hawaiian Islands to the United States. From the ground gone over, it seems to me that two facts stand out plain as the sun in heaven:

First. That it was the union of two constitutional, civilized, Christian governments, sovereign nations, by voluntary contract.

Second. That at some time in the future the smaller nation should have such form of government and such legislation as the American Congress might see fit to give it; and that, in the meantime, until the situation and conditions could be reported on, and Congress informed, and a new scheme of government devised and enacted, there should be no domestic changes of a radical and disturbing nature—to quote Mr. McKinley's language, "That the government of the islands should proceed without interruption."

Neither party to the contract had the slightest suspicion that Hawaii might be left for a couple of years without legal machinery for protecting life and property. Such a status would shock the conscience of all civilized nations, and every fact and circumstance

leading up to or connected with the cession of sovereignty goes to show that both parties intended that the ordinary and necessary functions of government should continue without a break. We would not have gone to the United States upon any understanding that the Federal Government would neither protect us from our own criminal classes nor permit us to protect ourselves; and the people of the United States are too high-minded and too chivalrous to take us upon any such barbarous conditions.

A contract is the meeting of two minds; what neither party intends, what both parties plainly and beyond question intend to guard against and prevent, is not a contract. If the fifth and sixth amendments to the Constitution of the United States are to be read into the Newlands resolution, contrary to the manifest intention of both parties, then there was no meeting of minds; then the contract of annexation failed; then Hawaii, in law, continued to be an independent nation. But we do not get to this "if" if we stick to the reasoning of *Barron* v. *Baltimore*.

From a territorial point of view, this question involves the turning loose upon a small community of some twenty-five men who have been convicted of murder, manslaughter, rape, and other like crimes. In the years that have elapsed witnesses have scattered, and in most cases retrial would be a hopeless task. The case also involves the validity of most of the civil verdicts obtained in the Hawaiian Islands during a period of nearly two years, and raises a doubt whether

revenues of the Hawaiian Government, amounting to about $3,000,000, were legally collected.

Respectfully submitted.

EDMUND P. DOLE.

APPENDIX.

I submit the following extracts from the constitution of 1852, being an amplification of the constitution of 1840, and extracts from the judiciary act of 1847, in support of my statement in oral argument that for sixty years the Hawaiian Government has been a civilized and constitutional government, affording its subjects and its citizens the fundamental guaranties of civil liberty and due process of law, which are secured to American citizens by the Constitution of the United States and to Englishmen by Magna Charta.

I also submit the following extracts from the constitution of the Republic of Hawaii, showing that the fundamental principles of liberty given by the first constitutions have been maintained and enlarged. It seems to me that these exhibits are material in view of the settled rule of international law that where territory inhabited by people with enlightened institutions is annexed an interregnum of civilized government will not be permitted, and the old machinery will continue to operate until new is supplied.

EDMUND P. DOLE.

CONSTITUTION GRANTED BY HIS MAJESTY KAMEHAMEHA III, KING OF THE HAWAIIAN ISLANDS, BY AND WITH THE ADVICE AND CONSENT OF THE NOBLES AND REPRESENTATIVES OF THE PEOPLE IN LEGISLATIVE COUNCIL ASSEMBLED, JUNE 14, 1852.

DECLARATION OF RIGHTS.

ARTICLE I. God hath created all men free and equal, and endowed them with certain inalienable rights;

among which are life and liberty, the right of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

ART. 2. All men are free to worship God according to the dictates of their own consciences; but this sacred privilege hereby secured shall not be so construed as to justify acts of licentiousness or practices inconsistent with the peace or safety of this Kingdom.

ART. 3. All men may freely speak, write, and publish their sentiments on all subjects being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press.

ART. 4. All men shall have the right in an orderly and peaceable manner to assemble, without arms, to consult upon the common good, give instructions to their representatives, and to petition the King or the legislature for a redress of grievances.

ART. 5. The privilege of the writ of habeas corpus belongs to all men, and shall not be suspended, unless by the King, when, in cases of rebellion or invasion, the public safety shall require its suspension.

ART. 6. The right of trial by jury, in all cases in which it has been heretofore used in this Kingdom, shall remain inviolate forever.

ART. 7. No person shall be subject to punishment for any offense, except on due and legal conviction thereof in a court having jurisdiction of the case.

ART. 8. No person shall be held to answer for any crime or offense (except in cases of impeachment, or for offenses within the jurisdiction of a police or district justice, or in summary proceedings for contempt) unless upon indictment, fully and plainly describing such crime or offense; and in the trial of any person on the charge of any crime or offense he shall have

the right to meet the witnesses who are produced against him, face to face; to produce witnesses and proofs in his own favor; and by himself, or his counsel, at his election, to examine the witnesses produced by himself and cross-examine those produced against him, and to be fully heard in his defense.

ART. 9. No person shall be required to answer again for an offense for which he has been duly convicted, or of which he has been duly acquitted, upon a good and sufficient indictment.

ART. 10. No person shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law.

ART. 11. No person shall sit as judge or juror, in any case in which his relative is interested, either as plaintiff, or defendant, or in the issue of which the said judge or juror may have, either directly or through a relative, any pecuniary interest.

ART. 12. Slavery shall, under no circumstances whatever, be tolerated in the Hawaiian Islands; whenever a slave shall enter Hawaiian territory he shall be free; no person who imports a slave, or slaves, into the King's dominions shall ever enjoy any civil or political rights in this realm; but involuntary servitude for the punishment of crime is allowable according to law.

Note: It will be noticed that the twelfth article of the constitution of 1852 antedates the thirteenth amendment to the Constitution of the United States by thirteen years. Slavery was prohibited by the constitution of the Hawaiian Monarchy at least twelve years before it ceased to exist in the United States, and, in fact, it had not existed in Hawaii since the beginning of the last century, and then only in a mild form. The contract labor law, which was abrogated by annexation, has been widely commented upon in this country as a species

of slavery; but the fact is that it was taken almost verbatim from the statutes of the United States which are in force to-day, relative to the shipment of sailors in the American mercantile marine. I am not defending the contract labor law; but, if it made the contract laborers slaves, then the laws of the United States make American sailors slaves.

ART. 13. Every person has the right to be secure from all unreasonable searches and seizures of his person, his houses, his papers, and effects; and no warrants shall issue, but on probable cause, supported by oath or affirmation, and describing the place to be searched, and the person or things to be seized.

ART. 14. The King conducts his government for the common good; for the protection, safety, prosperity, and happiness of his people; and not for the profit, honor, or private interest of any one man, family, or class of men among his subjects. Therefore, in making laws for the nation, regard shall be had to the protection, interest, and welfare, not only of the King, the chiefs, and rulers, but of all the people alike.

ART. 15. Each member of society has a right to be protected by it in the enjoyment of his life, liberty, and property, according to standing laws. He is obliged, consequently, to contribute his proportional share to the expense of this protection; to give his personal services, or an equivalent, when necessary, but no part of the property of any individual can with justice be taken from him or applied to public uses without his own consent or that of the King, the nobles, and the representatives of the people. And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

ART. 16. No subsidy, impost, duties, or tax of any description shall be established or levied, nor any

money drawn from the public treasury under any pretext whatsoever, without the consent of both branches of the legislature: *Provided*, That the legislature shall make provision, in the annual bills of appropriation, for the emergency of war, invasion, or rebellion; and the minister of finance shall render a detailed account to the legislature of any expenditure made under that provision.

ART. 17. All retrospective laws are unjust; therefore no such laws shall ever be passed.

ART. 18. The military shall always be subject to the laws of the land; and no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by the legislature.

ART. 19. All elections by the people shall be by ballot.

ART. 20. Every elector shall be privileged from arrest on election days, during his attendance at election, and in going to and returning therefrom, except in cases of treason, felony, or breach of the peace.

ART. 21. No elector shall be so obliged to perform military duty on the day of election as to prevent his voting, except in time of war or public danger.

ART. 26. No person shall ever sit upon the throne who has been convicted of any infamous crime or who is insane or an idiot.

ART. 60. The legislative power of this Kingdom is vested in the King, the House of Nobles, and the House of Representatives, each of whom has a negative on the other.

ART. 64. Each house shall be the judge of the qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day and compel the

attendance of absent members, in such manner and under such penalties as each house may provide.

ART. 65. Each house shall choose its own officers and determine the rules of its own proceedings.

ART. 69. The members of either house shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and they shall not be held to answer for any speech, or debate, made in the house, in any other court or place whatsoever.

ART. 76. The representation of the people shall be based on the principle of equality, and shall be forever regulated and apportioned according to the population, to be ascertained by the official census.

ART. 77. No person shall be eligible for a representative of the people who is insane or an idiot, or who shall at any time have been convicted of any infamous crime, nor unless he be a male subject or denizen of the Kingdom, who shall have arrived at the full age of twenty-five years; who shall know how to read and write, who shall understand accounts, and who shall have resided in the Kingdom for at least one year immediately preceding his election.

ART. 78. Every male subject of His Majesty, whether native or naturalized, and every denizen of the kingdom who shall have paid his taxes, who shall have attained the full age of twenty years, and who shall have resided in the kingdom for one year immediately preceding the time of election, shall be entitled to one vote for the representative or representatives of the district in which he may have resided three months next preceding the day of election; provided, that no insane person, nor any person who shall at any time have been convicted of any infamous crime within this

kingdom, unless he shall have been pardoned by the King, and by the terms of such pardon been restored to all the rights of a subject, shall be allowed to vote.

ART. 79. All bills or resolves for raising the revenue or calling for any expenditure of the public money shall originate in the house of representatives; but the house of nobles may propose or concur with amendments, as on other bills.

ART. 80. The house of representatives shall be the grand inquest of the Kingdom, and all impeachments made by them shall be heard and tried by the house of nobles.

ART. 81. The judicial power of the Kingdom shall be vested in one supreme court and in such inferior courts as the legislature may from time to time establish.

ART. 82. The supreme court shall consist of a chief justice and two associate justices, any of whom may hold the court. The justices of the supreme court shall hold their offices during good behavior, subject to removal upon impeachment, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office. Provided, however, that any judge of the supreme court, or of any other court of record, may be removed from office for mental or physical inability by a concurrent resolution of two-thirds of both branches of the legislature. The judge against whom the legislature may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either branch of the legislature shall act thereon.

ART. 84. The judicial power shall extend to all cases in law and equity arising under the constitution, any law of this Kingdom, and treaties made, or which shall

be made under their authority; to all cases affecting ambassadors, other public ministers and consuls, and to all cases of admiralty and maritime jurisdiction.

ART. 86. The chief justice of the supreme court shall be the chancellor of the Kingdom; he shall be ex officio president of the house of nobles in all cases of impeachment, unless when impeached himself; and exercise such jurisdiction in equity or other cases as the law may confer upon him, his decisions being subject, however, to the revision of the supreme court on appeal.

ART. 87. The decisions of the supreme court, when made by a majority of the justices thereof, shall be final and conclusive upon all parties.

ART. 88. The King, his ministers, the governors, and each branch of the legislature, shall have authority to require the opinions of the justices of the supreme court upon important questions of the law, and upon solemn occasions.

ART. 94. The King, after approving this constitution, shall take the following oath: I solemnly swear, in the presence of Almighty God, to maintain the constitution of the Kingdom whole and inviolate, and to govern in conformity with that and the laws.

ART. 98. No person shall ever hold a seat in the legislature, or any office of honor, trust, or profit under the government of the Hawaiian Islands who shall, in due course of law, have been convicted of theft, bribery, perjury, forgery, embezzlement, or other high crime or misdemeanor.

ART. 99. No officer of this government shall hold any office, or receive any pension or salary, from any other government or power whatever.

ART. 102. To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every

law shall embrace but one object, and that shall be expressed in the title.

ART. 105. Any amendment or amendments to this constitution may be proposed in either branch of the legislature, and if the same shall be agreed to by a majority of the members of each house, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the next legislature; which proposed amendment or amendments shall be published for three months previous to the election of the next house of representatives; and if, in the next legislature, such proposed amendment or amendments shall be agreed to by two-thirds of all the members of each house, and be approved by the King, such amendment or amendments shall become part of the constitution of this Kingdom.

THE JUDICIARY ACT OF 1847.

In 1847 a well considered and statesmanlike act was passed to organize the judiciary department of the Hawaiian Islands. It was the work of Chief Justice Lee. It was revised and redrawn in 1853. With minor changes it continued in force until the judiciary act of 1892, drawn by Mr. Sanford B. Dole, then one of the justices of the supreme court. Although the judiciary act of 1892 made substantial changes, and the organic act of 1900 made changes still more radical, a great part of this original act of 1847 is still in force.

Section 2 of Chapter I of said act declared that:

"Said department, and the several judges and other judicial officers connected therewith, shall be distinct from, and in all respects independent of, the executive department organized and authorized by the first and

second organic acts to which this act refers. The King, in his executive capacity, shall in no case control the judgments, decisions, and awards made or sanctioned by or before any of the said judges and judicial officers, neither shall he have authority to overrule the judgments, decisions, or awards so made or sanctioned, except as chief judge of the supreme court, a majority of said court concurring with him in opinion: Provided, however, that nothing herein contained shall be construed to prevent His Majesty, as executive head and chief magistrate of the Kingdom, from pardoning at pleasure, any person offending against the laws, after final conviction in any of the said courts: And further provided, that nothing herein contained shall prevent the executive branch in any matter criminal or civil, in which this Government is concerned as a party, plaintiff, or prosecutor, from withdrawing its suit, or from entering nolle prosequi, as contemplated in the fifth part of an act entitled 'An act to organize the executive department of the Hawaiian Islands.'"

Section 3 of Chapter I of this act declared that: "The principles of the Hawaiian constitution, and the prescriptions of an act entitled, An act to organize the executive ministry; of an act entitled, An act to organize the executive departments; of this act, of the civil code, of the criminal code, and of the laws, ordinances, and decrees heretofore passed and enacted, which have not been repealed by constitutional authority, and those hereafter to be enacted, shall be the measure of all judgments, awards, and decisions of the several judicial officers and courts created by this act. They shall have judicial regard to the rights vested and acquired by the government, and by private individuals, under any law, ordinance, or decree constitu-

tionally and legally passed and promulgated, which may afterwards have been repealed, and shall as to such vested and acquired rights, consider such law as still in force for judicial purposes. Being the courts of record, they shall determine for themselves the constitutionality and the binding effect of any law, ordinance, or decree passed, enacted, or put forth by the Nobles and Representatives under the approval of His Majesty, and of all orders in council, circular letters, patents, standing instructions, executive rules, ordinances, and decrees by His Majesty put forth through any of his executive departments or officers, with or without the sanction of his privy or cabinet councils. They shall have power judicially, being courts of record, to declare void or null any such act, ordinance, order, or decree, patent letter or instruction as may upon mature consideration appear to them contrary to the constitution, opposed to the vested and acquired rights of individuals, to the law of nature and of nations, and to subsisting treaties with any foreign power. They shall adjudge and determine the validity of all considerations founding either public or private obligations, contracts, and agreements, national, international, or personal. Being courts of record, they shall administer the comity of nations, and take notice as matters of fact, of the laws of foreign countries. They shall have jurisdiction to determine all controversies in which this Government is a party plaintiff, prosecutor, or defendant; or arising between private parties, relating to actions sounding in tort, to personal wrongs or chattels, or affecting the title to, or possession of land and tenements: Provided always, that nothing herein contained shall be so construed as to interfere with the rights and jurisdiction of the board

of commissioners to quiet land titles. They shall have jurisdiction to try and determine all crimes and misdemeanors, and to inflict the sentences annexed thereto by law."

Section 23 of article 2 of Chapter II of said act provided that: "In all cases of arrest for crimes or for misdemeanors cognizable before a jury, the magistrate in whose jurisdiction or on whose warrant the accused was arrested, shall, upon the bringing up of such accused, proceed to consider whether there is probable cause to believe that a jury of the circuit or superior court would, upon the evidence adduced, convict the accused of the crime or misdemeanor charged against him. Said justice shall reduce to writing, in substance, the evidence so elicited on examination, with the respective names of the witnesses, and if in his opinion the testimony do not warrant commitment for trial, he shall release the prisoner, entering that fact upon the criminal docket to be kept at his office; but if in his opinion there should be probable cause to believe that upon the evidence produced to him conviction would take place before a jury, he shall make out, sign, and deliver to the constable by whom the accused was arrested a mittimus."

Section 24 of article 2 of Chapter II of said act provided that "The failure to find a bill against any accused person at the next circuit or superior court, or having found such bill, the failure to prosecute the same at the ensuing circuit or superior court, unless the court postponed the same for good reasons, or failure to sustain such bill upon any of the charges therein preferred, or a verdict of not guilty to all the counts therein set forth, or the successive disagreement of two juries empaneled to try the same, shall operate as an acquittal of the accused, and as a supersedeas of the

power of the marshal, the sheriff or his deputy, longer to detain the said accused in custody upon the allegations for which he was originally committed."

Section 4 of Chapter III of article 2 of said act provided that "The salaries of the judges of the superior court of law and equity shall be fixed by the King and privy council at the time of their appointment, and shall not be diminished during their term of office."

Section 6 of Chapter IV of article 2 of said act provided that "Full latitude of examination and cross-examination of witnesses, and of debate and advocacy, shall be allowed to the accused in all criminal causes by the court"

Section 7 of Chapter IV of article 2 of said act provided that "In all cases in which an accused or indicted offender is unable to employ counsel for his defense, the court shall have power to assign him such counsel from the licensed practitioners at its bar, who shall use every lawful exertion in his behalf, without fee or reward, upon pain of contempt to the court."

Section 8 of Chapter IV of article 2 of said act provided that "The verdict of the jury, or as the issue may happen to be, the decision at bar, subject to arrest of judgment, shall found the sentence to be passed in open court by the judge, pursuant to the prescriptions and penalties of the law charged and found to have been violated, subject to the executive clemency, and subject to motion in arrest of execution for cause."

Section 9 of Chapter IV of article 2 of said act provided that: "Any judge of a court of record may, for cause shown to his satisfaction, respite any convicted criminal for any length of time sufficient for the purposes of mercy, or not to work injury to innocent third parties."

Section 10 of Chapter IV of article 2 of said act provided that: "No person at the time insane, and no woman at the time enciente, shall suffer capital punishment; neither shall any child suffer capital punishment who has not evinced a knowledge of the distinction between right and wrong."

Section 11 of Chapter IV of article 2 of said act provided that: "In all cases in which the law of this kingdom awards the punishment of death, there shall always intervene at least forty-eight hours between the conviction and the sentence, and at least fourteen days between the sentence and the execution."

Article 4 of Chapter IV of said act provided for trials by jury. There were no counties, and are none to the present day. The islands were divided into districts and circuits, which, for judicial purposes, amounted to the same thing. The jurors were summoned from the grand body of the circuit, and the panels were drawn by lot with challenges for cause, and peremptory challenges, in all essential respects as in the United States. Native juries tried civil suits between natives, and criminal cases in which natives were defendants. Foreign juries tried civil suits between foreigners, and criminal cases in which persons of foreign blood were defendants. The provision in regard to mixed cases was:

"In all jury cases in which one party is a foreigner and the other a native, the jury shall be composed of an equal number of natives and foreigners (naturalized or unnaturalized), who shall be drawn alternately from the boxes containing the names of such foreigners and natives as have been summoned to attend the court convened for the trial of such cases." This provision in regard to native, foreign, and mixed juries remained unchanged for fifty-three years.

Section 21 of article 4 of Chapter IV of said act provided that "No jury for the trial of any civil or criminal case shall be less than twelve in number; but when any nine of such jury shall agree upon a verdict, they may render the same, and such verdict shall be as valid and binding upon the parties as if rendered by all twelve." This provision, passed in 1847, was the law of the land when the islands were annexed to the United States.

CONSTITUTION OF THE REPUBLIC OF HAWAII.

RIGHTS OF PERSON AND PROPERTY.

ARTICLE 1.—*Rights of the person.*

SECTION 1. God hath endowed all men with certain inalienable rights, among which are life, liberty, and the right of acquiring, possessing, and protecting property, and of pursuing and obtaining happiness.

SEC. 2. The Government is conducted for the common good, and not for the profit, honor, or private interest of any one man, family, or class of men.

SEC. 3. The legislature may provide law, however, for the supervision, registration, control, and identification of all persons, or any class or nationality of persons; and may also by law restrict and limit the term of residence, and the business or employment of all persons or of any class or nationality of persons coming into the Republic.

ARTICLE 2.—*Religious freedom.*

All men are free to worship God according to the dictates of their own consciences; but this privilege shall not be so construed as to justify acts of licentiousness or practices inconsistent with the peace or safety of the Republic.

ARTICLE 3.—*Freedom of speech and of the press.*

All men may freely speak, write, and publish their sentiments on all subjects; and no law shall be enacted to restrain the liberty of speech or of the press; but all persons shall be responsible for the abuse of such right. Provided, however, that the legislature may enact such laws as may be necessary, to restrain and prevent the publication of public utterance of indecent or seditious language.

ARTICLE 4.—*Meeting and petition.*

All men shall have the right to assemble in an orderly and peaceable manner, without arms, to consult upon the common good and to petition the President or legislature for redress of grievances.

ARTICLE 5.—*Writ of habeas corpus.*

The privilege of the writ of habeas corpus belongs to all men, and shall not be suspended, except by the President or by one of the cabinet ministers as herein provided, when in case of rebellion or invasion, or imminent danger of rebellion or invasion, the public safety shall require its suspension.

Provided, however, that no alien unlawfully entering the Republic shall be entitled to this writ as of right.

ARTICLE 6.—*Right of trial.*

SECTION 1. No person shall be subject to punishment for any offense except on due and legal conviction thereof by a tribunal having jurisdiction of the case.

SEC. 2. Except in case of impeachment or offenses within the jurisdiction of a district magistrate, or in summary proceedings for contempt, no person shall

be held to answer for any offense except upon indictment, information, or complaint, describing such offense; and he shall in all cases have the right to meet the witnesses who are produced against him, face to face; to produce witnesses and proofs in his own favor; and by himself or his counsel, at his election, to examine the witnesses produced by himself and cross-examine those produced against him, and to be heard in his own defense.

SEC. 3. Subject to such changes as the legislature may from time to time make in the number of jurors for the trial of any case, and concerning the number required to agree to a verdict and the manner in which the jury may be selected and drawn, and the composition and qualifications thereof, the right of trial by jury in all cases in which it has been heretofore used, shall remain inviolable except in actions for debt or assumpsit in which the amount claimed does not exceed one hundred dollars, and such offenses less than felonies as may be designated by law.

And provided that no capital case shall be tried by a jury of less than twelve men.

The jury may be waived in all civil cases under such conditions as may be prescribed by law, and by defendants in all criminal cases except capital.

ARTICLE 7.—*Previous conviction or acquittal.*

No person shall be required to answer for any offense identical both in law and fact with an offense of which he has been duly convicted or of which he has been duly acquitted.

ARTICLE 8.—*Privilege of accused.*

No person shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property without due process of law.

ARTICLE 9.—*Slavery.*

Involuntary servitude, except for crime, is forever prohibited in this Republic. Whenever a slave shall enter the territory of this Republic he shall be free.

ARTICLE 10.—*Security from search and arrest.*

Every person has the right to be secure from all unreasonable searches and seizures of his person, his house, his papers and effects; and no warrant shall issue except on probable cause, supported by oath or affirmation and describing the place to be searched and the persons or things to be seized.

ARTICLE 11.—*Taxing and appropriating power.*

SECTION 1. No subsidy, duty, or tax of any description shall be established or levied without the consent of the legislature; nor shall any money be drawn from the public treasury without such consent, except in the manner directed by this constitution.

SEC. 2. Each member of society has the right to be protected in the enjoyment of his life, liberty, and property according to law; and therefore he shall be obliged to contribute his portion or share to the expense of this protection; and to give his personal services or an equivalent when necessary, as may be provided by law.

ARTICLE 12.—*Eminent domain.*

Private property may be taken for public use, and private rights of way may be obtained across the lands of others for railways, drains, flumes, water-pipes, and ditches for agricultural, milling, manufacturing, mining, domestic, or sanitary purposes; but only upon due process of law and just compensation.

Public use shall include such purposes as shall be required or designated by treaty stipulations between the Republic of Hawaii and any other nation.

ARTICLE 13.—*Military subject to law.*

SECTION 1. The military shall always be subject to the laws of the land.

SEC. 2. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner prescribed by the legislature.

Articles 14 to 81, inclusive, relate to the form and name of the government, the territory included therein, the ensign of the Republic, citizenship, special rights of citizenship, naturalization, denization, the executive power, the qualifications of the President, the method of election, his salary, his powers of appointment and of removal, convening of the legislature, receiving foreign representatives, messages to the legislature, suspension of the writ of habeas corpus in cases of rebellion or invasion, treaties with foreign countries, military powers, the cabinet, the acting President in case of death or disability of the President, the legislature, the action of members thereof, qualifications, oaths of office, method of voting, quorum, punishments for contempt of legislature, compensations of members, punishment of members, exemption from liability for words spoken in debate, exemptions from arrest while attending the legislature, like provisions in regard to the Senate, methods of legislation, veto of the President, appropriations, conduct of elections, registration of voters, and council of state.

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ART. 82. The judicial power of the Republic shall be vested in one supreme court, and in such inferior courts as the legislature may from time to time establish.

ARTICLE 83. *Supreme court—impeachment—removal.*

SECTION 1. The supreme court shall consist of a chief justice and not less than two associate justices. Provided, however, that in case of the disqualification or absence of any justice thereof in any cause pending before the court his place for the trial and determination of said cause shall be filled as provided by law.

SEC. 2. The justices of the supreme court shall hold their offices during good behavior, subject to removal upon impeachment, and shall receive for their services a compensation which shall not be diminished during their continuance in office: Provided, however, that any justice of the supreme court, or a judge of any other court of record, upon recommendation of the executive council, may be removed from said office on a resolution passed by two-thirds of all the elective members of the legislature sitting together.

SEC. 3. The justice or judge against whom the legislature may be about to proceed shall have notice thereof, accompanied by a copy of the causes alleged for his removal, at least ten days before the day on which the legislature shall act thereon. He shall be heard before the legislature.

ARTICLE 84.—*Supreme and inferior courts.*

The judicial power shall be divided among the supreme court, the justices thereof, and the several inferior courts of the Republic in such a manner as the legislature may, from time to time, prescribe; and the tenure of office of the judges of the inferior courts

shall be such as may be fixed by the law creating them.

ARTICLE 85.—*Jurisdiction.*

The judicial power shall extend to all cases in law and equity, arising under the constitution and laws of the Republic, and treaties; to all cases affecting public ministers and consuls, and to all cases of admiralty and maritime jurisdiction.

ARTICLE 86.—*Decisions.*

The decisions of the supreme court shall be final and conclusive upon all parties, when made by a majority of the justices thereof or by a majority of those who constitute the court as provided by law in case a justice thereof is disqualified or absent.

ARTICLE 87.—*Opinions to the executive.*

The justices of the supreme court, when requested by the President or the Cabinet, shall render opinions upon questions of law upon solemn occasions.

ARTICLE 88.—*Disqualification by previous judgment.*

No judge or magistrate shall sit on an appeal or new trial in any case in which he may have given a previous judgment.

ARTICLE 89.—*Disqualification by relationship or pecuniary interest.*

No person shall sit as a judge or juror in any case in which his relative by affinity, or by consanguinity within the third degree, is interested, either as plaintiff or defendant, or in the issue of which the said judge or juror may have, either directly or through such relative, any pecuniary interest.

ARTICLE 90.—*Impeachment.*

SECTION 1. The President and all civil officers of the Republic shall be liable to removal from office on impeachment by the house of representatives upon any of the following grounds, namely:

Any act or negligence involving moral turpitude punishable by law as an offense and committed while in office, incapacity for the due performance of official duty, maladministration in office, and assessment of officeholders for partisan or political expenses.

SEC. 2. The senate shall be a court, with full and sole authority to hear and determine all impeachments made by the house of representatives.

SEC. 3. The chief justice of the supreme court shall be ex officio president of the senate in all cases of impeachment, unless when impeached himself. Should the chief justice be impeached, some person specially commissioned by the President shall preside over the senate during such trial.

SEC. 4. Previous to the trial of any impeachment the senators shall respectively be sworn truly and impartially to try and determine the charge in question according to the law and the evidence.

SEC. 5. The judgment of the senate, in case of the conviction of the person impeached, shall not extend further than to removal from office and disqualification to hold any place of honor, trust, or profit under the Republic; but the person so convicted shall be, nevertheless, liable to indictment, trial, judgment, and punishment according to law.

Then follow miscellaneous provisions in regard to existing statutes and offenses, officeholders, treaties, bonds, etc., crown lands, majority rule, prohibiting aid to sectarian or private schools, prohibiting lotteries, prohibiting Government officers from holding office or taking pay from any other government, etc.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE TERRITORY OF HAWAII, APPELLANT,
v.
OSAKI MANKICHI.
} No. 219.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF HAWAII.

POINTS MADE IN ORAL ARGUMENT BY THE SOLICITOR-GENERAL, WITH APPENDIX CONTAINING TREATY, RESOLUTION, AND ORGANIC ACT.

DATES.

June 16, 1897, Treaty of Annexation negotiated. (See Appendix.)

July 7, 1898, Resolution of Annexation approved (30 Stat., 750). (See Appendix.)

August 12, 1898, Transfer of Sovereignty.

November 4, 1898, *Edwards* case decided (11 Haw. Rep., 571), holding Fifth and Sixth Amendments not in force in Hawaii.

March 26, 1899, crime committed (Rec., p. 3).

May 4, 1899, indictment found (Rec., p. 9).

May 18, 1899, defendant found guilty (Rec., p. 7).

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April 30, 1900, an act "To provide a Government for the Territory of Hawaii," passed (31 Stat., 141). (See Appendix.)

June 14, 1900, the Organic Act takes effect and Territorial Government is organized.

August 26, 1901, petition for habeas corpus filed in United States circuit court.

I.

At the time of the cession the Hawaiian Islands constituted a sovereign and independent nation, with a government of its own, republican in form, and a civilized system of law, civil and criminal, defining rights and affording remedies. The courts were open and due process of law provided. The system of jurisprudence had been framed and put in operation largely by Americans. It was believed to be adapted to the nature and needs of the inhabitants of the islands. The distinction between the native and foreign element was recognized in the law. There was a jury system, but racial lines were drawn. A native Hawaiian was entitled to be tried by a jury of native Hawaiians, and a foreigner by a jury of foreigners. Naturally, in view of this distinction, grand juries drawn from the body of the people were not used. As far back as 1847 the prosecution of all offenses devolved upon the attorney-general, who prepared indictments, which were certified by the judge.

In adopting this method of indictment and trial the Hawaiian people only did what the people of many of our States, particularly those in the West, have done,

and what any of them may do under our Constitution. This court has held so over and over again.

> The State is not tied down by any provision of the Federal Constitution to the practice and procedure which existed at the common law. *Subject to the limitations heretofore named*, it may avail itself of the wisdom gathered by the experience of the century to make such changes as may be necessary. (Mr. Justice Brewer in *Brown* v. *New Jersey*, 175 U. S., 171, 175.)

"It appears to us," said Mr. Justice Peckham in *Maxwell* v. *Dow* (176 U. S., 581, 604), "that the questions whether a trial in criminal cases not capital shall be by a jury composed of eight instead of twelve jurors, and whether in case of an infamous crime a person shall only be liable to be tried after presentment or indictment of a grand jury, are eminently proper to be determined by the citizens of each State for themselves. * * * *It is emphatically the case of the people by their organic law, providing for their own affairs*, and we are of opinion they are much better judges of what they ought to have in these respects than anyone else can be."

Or, as Mr. Justice Brown, speaking for the court in *Bolln* v. *Nebraska* (176 U. S., 83), said, page 88:

> As we have repeatedly held, the fourteenth amendment was not intended to curtail the powers of the States to so amend their laws as to make them conform *to the wishes of their citizens*, to changed views of administration, or to the exigencies of their social life.

For provisions of various State constitutions respecting indictment by grand jury and trial by petit jury, see Annotated Constitution of New York (1894), pages 24, 62.

II.

But it is urged that the right to be indicted by a grand jury and convicted only by the unanimous verdict of a petit jury is fundamental, and can not be denied without violating the Constitution of the United States. If this were so, this court would never have laid down the doctrine adhered to in a line of decisions from *Hurtado* v. *California* (110 U. S., 516) to *Maxwell* v. *Dow* (176 U. S., 581), because the fourteenth amendment provides that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law." It was upon the ground they are fundamental that Mr. Justice Harlan dissented in these cases. If they are fundamental, this amendment would protect them against denial or impairment by any authority, State or Federal. Mr. Justice Brewer pointed this out in *Brown* v. *New Jersey* (175 U. S., 172), saying, page 175:

> The State has full control over the procedure in its courts, both in civil and criminal cases, *subject only to the qualification that such procedure must not work a denial of fundamental rights, or conflict with specific and applicable provisions of the Federal Constitution.*

After pointing out that the specific and applicable provisions of the Constitution relating to indictment by a grand jury and trial by a petit jury applied only to the Federal courts, he necessarily held that the rights of indictment by a grand jury and trial by a common-law petit jury are not fundamental, and therefore may be abolished.

III.

Such being the situation, the Hawaiian Republic submitted a proposition of cession. There were certain conditions attached to this. Did Congress have power to accept the cession upon condition? If it were doubtful before, whether we may take territory *sub modo* and upon conditions, it is not now, since the decision of the Insular Tariff cases.

Chief Justice Marshall said in the *Canter case* (1 Pet., 541) that acquired territory "becomes a part of the nation to which it is annexed either *on the terms stipulated in the treaty of cession*, or on such as the new master shall impose." And Mr. Justice Gray in his concurring opinion in *Downes* v. *Bidwell* (182 U. S., 244) said, bottom page 346:

> If Congress is not ready to construct a complete government for the conquered territory, it may establish a temporary government, which is not subject to *all* the restrictions of the Constitution.

IV.

Such being the situation in Hawaii and such the power of Congress, the Hawaiian Republic proposed

to cede the islands to this country upon certain terms and conditions set forth in a treaty (printed in the appendix). This treaty was negotiated, signed by Secretary Sherman, but never approved or ratified, because Congress, after consideration, deemed it best to follow the plan pursued in the case of Texas and annex by joint resolution. This was done. The resolution contains the precise terms and conditions set forth in the proposed treaty. The question for consideration is therefore one of construction. What was the intention of the parties to the cession as expressed in the resolution? In determining this, we may look at the existing conditions, weigh the language used, consider the construction placed on it by both governments, and the view Congress evidently took of it in passing the organic act.

V.

Of course the presumption is that the government of Hawaii in offering to cede the islands, and Congress in accepting this proposition and annexing them, intended that the existing government of the islands should continue without interruption until another could be provided by Congress. To enable Congress to act intelligently it was necessary that representatives of both governments should look into the situation and report to Congress what changes were necessary and proper. It was not known how long it would take to do this. It was believed a short time only would be required. It was not known how this annexed territory ought to be or would be governed by the United States, whether

as a dependency, a Territory, or a State. In 1854 a treaty of annexation was negotiated which provided for the incorporation of the Hawaiian Islands into the American Union as a State. If so incorporated, the existing system of procedure, civil and criminal, might be continued, without denying any right under the Constitution of the United States.

In *Holden* v. *Hardy* (169 U. S., 366), Mr. Justice Brown, speaking for the court, said, page 389:

> In the future growth of the nation, as heretofore, it is not impossible that *Congress may see fit to annex territories whose jurisprudence is that of the civil law. One of the considerations moving to such annexation might be the very fact that the territory so annexed should enter the Union with its traditions, laws, and systems of administration unchanged.* It would be a narrow construction of the Constitution to require them to abandon these, or to substitute for a system which represented the growth of generations of inhabitants, a jurisprudence with which they had had no previous acquaintance or sympathy.

In view of all this, I submit the presumption is that both parties to the arrangement for annexation intended the civil and criminal procedure that had been in use for more than half a century should continue until Congress could act intelligently upon the matter, determining whether, in the organic act, existing methods should be preserved, or, if modified, in what particulars. *It is not to be presumed that it was intended to tear down the old house before it was even known a new one would be needed.*

VI.

The resolution of annexation reads:

> Whereas the Government of the Republic of Hawaii *having, in due form, signified its consent,* in the manner provided by its Constitution—

This refers to the treaty of annexation, negotiated in 1897—

> to cede absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies, and also to cede and transfer to the United States the absolute fee and ownership of all public, Government, or Crown lands, public buildings, etc.: Therefore,
>
> *Resolved, etc.*, That said cession—

Of course the word "cession" is inaccurately used; it was really a proposition to cede—

> That said cession is accepted, ratified, and confirmed, and that the said Hawaiian Islands and their dependencies be, and they are hereby, annexed as a part of the territory of the United States—

Not as a part of the United States, but as "a part *of the territory of the United States;*" in other words, a possession of the United States—

> And are subject to the sovereign dominion thereof, and that all and singular the property and rights hereinbefore mentioned are vested in the United States of America.

This completes the broad language of the section which annexed the Hawaiian Islands and subjected

them to the sovereignty of the United States. The remaining paragraphs of the resolution set forth certain terms and conditions annexed to the offer of cession by the Republic of Hawaii, which the United States accepted and was in honor bound to observe, and did observe.

The first related to the public lands of Hawaii:

> The existing laws of the United States relative to public lands shall not apply to such lands in the Hawaiian Islands, but the Congress of the United States shall enact special laws for their management and disposition: *Provided*, That all revenue from or proceeds of the same, except as regards such part thereof as may be used or occupied for the civil, military, or naval purposes of the United States, or may be assigned for the use of the local government, *shall be used solely for the benefit of the inhabitants of the Hawaiian Islands* for educational and other public purposes.

The next paragraph provides for the continuance of the existing Government without interruption:

> Until Congress shall provide for the government of such islands, *all the civil, judicial, and military powers exercised by the officers of the existing government* in said islands shall be vested in such person or persons and shall be exercised in such manner as the President of the United States shall direct; and the President shall have power to remove said officers and fill the vacancies so occasioned.

It is to be observed that this is not a provision by Congress for a government for the islands; it looks

forward to the time when Congress may intelligently provide a government, and, until that time, it continues the existing government without interruption. This is the answer to the contention that the resolution of annexation is in itself an organic act providing a government for Hawaii by applying the laws then in force, except those contrary to the Constitution of the United States, etc.

It is to be noted that only "the civil, judicial, and military powers exercised" are to continue until Congress shall provide for the government of the islands. The word "legislative" is purposely omitted. And this is explained by the provision in the next paragraph that—

> *The municipal legislation* of the Hawaiian Islands (with certain named exceptions) *shall remain in force* until the Congress of the United States shall otherwise determine.

Used in a broad sense, "civil" may cover and include legislative, executive, and judicial powers. But the express provision respecting the legislative power, coupled with the subsequent provisions that the municipal legislation of the islands should continue in force, make it clear that it was not the intention that there should remain in Hawaii, during the transition period, any legislative power to change the existing municipal law, pending the action of Congress. And this conclusion is confirmed by the subsequent provision authorizing the President to appoint five commissioners, at least two of whom should be residents of the Hawaiian Islands, "who shall, as soon as reasonably

practicable, *recommend to Congress such legislation* concerning the Hawaiian Islands *as they shall deem necessary or proper.*"

So this was the scheme, that the existing government was to be continued without interruption in its exercise of civil, judicial, and military power, but not in its exercise of legislative power. The municipal legislation of the islands was to remain in force until Congress, upon the report of the Commissioners, should see fit to change it.

If Congress had intended to use the word "civil" in the broad sense, it would not have used the word "judicial." Civil and military powers would have covered the entire field.

VII.

Along with the provisions continuing the existing government are certain special provisions: The first abrogating the treaties of the Hawaiian Islands and substituting those of the United States; the second providing for the continuance of the existing customs regulations of the islands with the United States and other countries; the third providing for the assumption of the public debt of the islands by the United States with the proviso that so long as the existing government and the present commercial relations of the Hawaiian Islands are continued the government shall continue to pay the interest on the debt, and the fourth forbidding any further immigration of Chinese into the islands or the passage of any Chinese from the islands to the United States.

With reference to these special provisions, it was asked during the argument, "Why provide that the customs laws shall not extend there, unless, without this provision, they would extend there?"

But the provision is, not that the customs laws shall not extend there, but that the existing customs relations shall remain unchanged, until Congress shall extend the customs laws there.

And, putting a similar question about another provision, "Why provide that the existing treaties of the Hawaiian Islands shall cease and determine and our treaties be substituted, unless, without this provision, the Hawaiian treaties would remain in force, notwithstanding the cession of the islands, the transfer of sovereignty, and the extinction of the Republic of Hawaii as an independent nation?"

If it be contended that the special provisions respecting the public lands, the public debt, the customs and commercial relations of the islands, and the Chinese show that Congress understood that without these the Constitution and laws of the United States would have been extended to the island *in toto*, it may with equal force be asserted that the treaty provision shows that Congress understood that without it, notwithstanding the cession and transfer of sovereignty, the Republic of Hawaii would continue an independent nation retaining its treaty relations with the powers of the earth.

In point of fact, the special provisions were designed to make explicit the agreement of the two governments

on essential points. But they have not served to remove all doubt, as witness the Crossman case and this one.

VIII.

In my brief I stated that the provision, "no Chinese, by reason of anything herein contained, shall be allowed to enter the United States from the Hawaiian Islands," is inconsistent with the view that Congress intended by the resolution of annexation to incorporate the islands as an integral part of the United States; and counsel calls attention to the provision in the organic act to the effect that "no Chinese laborer, whether he shall hold such certificate or not, shall be allowed to enter any State, Terrritory, or district of the United States from the Hawaiian Islands," contending that, by parity of reasoning, this provision shows that it was not the intention of Congress, by the organic act, to incorporate the islands or extend the Constitution over them. But there is a distinction between Chinese who were citizens of the Hawaiian Islands and Chinese laborers who were aliens, and there only by sufferance. I had in mind those Chinese who were citizens of Hawaii, and the point I made was that if the resolution of annexation incorporated these islands as an integral part of the United States, their citizens would become citizens of the United States with the right of free passage from one portion of the United States to another. Of course aliens here by license only may be sent out of the country or restricted to whatever part of it Congress may deem expedient.

IX.

I now come to the positive provision:

> The municipal legislation of the Hawaiian Islands * * * shall remain in force until the Congress of the United States shall otherwise determine.

Where I have placed the stars were inserted the following qualifying clauses, each of which follows naturally and irresistibly from other provisions of the resolution:

(*a*) "Not enacted for the fulfillment of the treaties so extinguished;"

Obviously such legislation fell with the treaties.

(*b*) "Not inconsistent with this joint resolution;"

Because the resolution contained certain provisions inconsistent with the existing law of Hawaii; for example, that relating to the Chinese.

(*c*) "Not contrary to the Constitution of the United States;"

Because by the cession the islands became subject to the dominion of the United States, and there are certain limitations of the Constitution which apply wherever the jurisdiction of the United States extends; and

(*d*) "Nor to any existing treaty of the United States;"

Because the resolution substituted these treaties for the Hawaiian treaties.

It is to be observed that these qualifying clauses flow from and rest on the positive provisions of the

resolution. They recognize a change in conditions owing to the positive provisions. They are not positive themselves; they do not change conditions; they simply recognize conditions as changed because of the provisions which are positive.

X.

Counsel contends that the purpose and effect of the qualifying words "not contrary to the Constitution of the United States" was to extend the Constitution, with all its limitations, to the Hawaiian Islands. He says these words are equivalent to those used in the organic act of Utah, and he relies upon certain cases in which the court has held that when Utah was a Territory its inhabitants were entitled to be indicted by a grand jury and tried by common-law petit jury. But the act of September 9, 1850 (9 Stat., 453), "to establish a Territorial government for Utah," provided:

> SEC. 17. That the Constitution and laws of the United States *are hereby extended over and declared to be in force in* said Territory of Utah, so far as the same, or any provision thereof, may be applicable.

This is the equivalent, not of the qualifying clause in the resolution of annexation, but of the positive provision in the organic act of the Hawaiian Islands, where it is provided—

> SEC. 5. That the Constitution, and, except as herein otherwise provided, all the laws of the United States which are not locally inapplicable, *shall have the same force and effect within the said Territory as elsewhere in the United States.*

I concede that by this latter provision the Constitution was for the first time extended to these islands, but I submit that the use of the qualifying clause was merely a recognition of that fact that by the cession and transfer of sovereignty there were certain limitations of the Constitution, preservative of fundamental rights, which became applicable, and necessarily, if there were any of the municipal legislation of the islands inconsistent with these applicable limitations, they became null and void and could not remain in force.

XI.

I have already, both in printed briefs and oral arguments, called attention to the character of those limitations which are applicable wherever the sovereignty of the United States extends. It is unnecessary to repeat what I have said as clearly as I could, or to refer the court to the language of Mr. Justice Brown and Mr. Justice White in their opinions in the *Downes case* to the effect that there are fundamental rights and principles, the basis of all free government, which can not with impunity be transcended, although the territory has not been incorporated into the United States. And this is doubtless what Mr. Justice Harlan, speaking for the court, referred to in *McAllister* v. *United States* (141 U. S., 174), when he said (p. 188):

> How far the exercise of that power [the power of Congress to govern the Territories] is restrained by *the essential principles upon which our system of Government rests*, and which are embodied in the Constitution, we need not stop

to inquire, though we may repeat what was said in *Mormon Church* v. *United States* (136 U. S., 1, 44): "Doubtless Congress, in legislating for the Territories, would be subject to *those fundamental limitations in favor of personal rights* which are formulated in the Constitution and its amendments; *but these limitations would exist rather by inference and the general spirit of the Constitution*, from which Congress derives all its powers, than by any express and direct application of its provisions.

XII.

Both the Hawaiian Government and the Government of the United States construed the resolution as providing that the existing government should continue without interruption in the exercise of its civil, judicial, and military powers. The existing municipal legislation was regarded as remaining in force. No legislative power for the purpose of changing the existing municipal legislation was exercised during the transition period. The legislature was not in session when the transfer of sovereignty took place. It would not have met for eighteen months, and before that time it was prorogued by President McKinley.

Necessarily, in the protection of life and property, criminals were indicted and tried as they had been. The judicial powers of the Republic of Hawaii, which were continued in force by express provision of the resolution, included the power, by the trial court, to indict and try criminals in the manner provided by existing law, and the judicial power by the supreme

court of the islands to determine finally and conclusively whether the criminal had been legally convicted.

In the *Edwards* case, decided in November, 1898 (11 Haw. Rep., 571), the supreme court of Hawaii passed upon the question whether the fifth and sixth amendments applied within the islands, and after a careful scrutiny of the provisions of the resolution, held they did not. There was no provision at that time for the review of the finding of that court by this court. That court was the final court, and I submit that its decision as to what was law in Hawaii during the transition period must be regarded as final. That was one of the judicial powers continued without interruption, the power of the supreme court of the Hawaiian Islands to determine finally what was law in those islands.

XIII.

But it is insisted that the common law of England was in force in the islands under the Republic, and that, exercising rights under that, the courts of Hawaii might have summoned grand juries, subpœnaed witnesses before them, and required a unanimous verdict of the trial jury to convict. It is true that the civil code of 1897 of the islands makes the common law of England the common law of the islands, with certain exceptions. This is the provision:

> SEC. 1109. The common law of England, as ascertained by English and American decisions, is hereby declared to be the common law of the Hawaiian Islands in all cases, *except as otherwise expressly provided by the Hawaiian constitution or*

> *laws*, or fixed by Hawaiian judicial precedent, or established by Hawaiian national usage, *provided, however, that no person shall be subject to criminal proceedings except as provided by the Hawaiian laws.*

And this was the reason why the supreme court of Hawaii, in the *Edwards case*, said:

> A complete answer to these propositions is that *there is no Hawaiian statute authorizing a grand jury or requiring unanimity of the jury* in their verdicts, and to adopt these provisions in our criminal procedure without a statute authorizing them would violate the letter of the Newlands resolution, which continues our laws and does not make new ones for us.

Under the law of Hawaii no man could be put on trial until he had been indicted by the attorney-general of the Republic and this indictment was certified by the judge of the court. A provision of this kind may protect a man more than to place him at the mercy of any grand jury that a judge might see fit to summon. And he further had the right to be tried by a jury of his own race. Suppose a court had violated these rights under the constitution and laws of Hawaii, and, summoning a grand jury of bystanders, had secured the indictment of a citizen and put him on trial before a common-law petit jury, summoned as the court saw fit. Would such an indictment and such a trial have stood the test of a review by the higher court? To permit such procedure would be to indorse the exercise by a Hawaiian judge of a power never created or sanctioned by constitution or law and capable of

infinite abuse. *It was far better to proceed under the law they had than to act without any law at all.*

XIV.

If Congress had intended, when consenting to annex Hawaii, to incorporate those islands immediately into the United States and extend our Constitution and laws there, it would have made some provision to that end. If Congress had then intended to extend to the islands our grand jury and petit jury system, it would have said so. The omission indicates the lack of intention, which is confirmed by the provisions of the organic act "To provide a government for the Territory of Hawaii." In this measure Congress provided that the islands shall be known as the "Territory of Hawaii" (sec. 2); established a territorial government (sec. 3); made all persons who were citizens of the Republic of Hawaii of August 12, 1898 (the date of the transfer of sovereignty), citizens of the United States (sec. 4); and provided:

> SEC. 5. That the Constitution, and, except as herein otherwise provided, all the laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States.

These provisions did without doubt incorporate this Territory into the United States and extend the Constitution, and laws not locally inapplicable, to it.

The organization of the islands, their incorporation as a Territory, and the extension to them of the Constitution and laws of the United States, necessarily

brought them, for the first time, within the operation of the fifth and sixth amendments and therefore required the enactment of section 83 (see Appendix) amending the law of civil and criminal procedure so as to extend our grand and petit jury system there.

In this connection let me call the attention of the court to section 10 of the organic act, which provides that—

> All offenses which by statute then [that is, during the transition period] in force were punishable *as offenses against the Republic of Hawaii* shall be punishable as offenses against the government of the Territory of Hawaii, unless such statute is inconsistent with this act, or shall be repealed or changed by law. * * * All criminal and penal proceedings then [that is, during the transition period] *pending in the courts of the Republic of Hawaii* shall be prosecuted to final judgment and execution in the name of the Territory of Hawaii.

The provisions of the organic act make it obvious that Congress understood that during the transition period the Constitution and laws of the United States were not in force in Hawaii; that the Constitution and laws of the Republic of Hawaii were in force there; that criminal prosecutions were conducted by the Republic of Hawaii under its laws; and that the fifth and sixth amendments had not then been extended to the islands.

JOHN K. RICHARDS,
Solicitor-General.

MARCH 7, 1903.

APPENDIX.

TREATY OF ANNEXATION OF HAWAII, NEGOTIATED IN 1897, UNDER PRESIDENT McKINLEY, SECRETARY OF STATE SHERMAN.

The United States and the Republic of Hawaii, in view of the natural dependence of the Hawaii Islands upon the United States, of their geographical proximity thereto, of the preponderant share acquired by the United States and its citizens in the industries and trade of said islands, and of the expressed desire of the Government of the Republic of Hawaii that those islands should be incorporated into the United States as an integral part thereof and under its sovereignty, have determined to accomplish by treaty an object so important to their mutual and permanent welfare.

To this end the high contracting parties have conferred full powers and authority upon their respectively appointed plenipotentiaries, to wit:

The President of the United States, John Sherman, Secretary of State of the United States.

The President of the Republic of Hawaii, Francis March Hatch, Lorrin A. Thurston, and William A. Kinney.

ARTICLE I.

The Republic of Hawaii hereby cedes absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies; and it is agreed that all territory of and appertaining to the

Republic of Hawaii is hereby annexed to the United States of America under the name of the Territory of Hawaii.

ARTICLE II.

The Republic of Hawaii also cedes and hereby transfers to the United States the absolute fee and ownership of all public, Government, or Crown lands, public buildings or edifices, ports, harbors, military equipments, and all other public property of every kind and description belonging to the Government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining.

The existing laws of the United States relative to public lands shall not apply to such lands in the Hawaiian Islands, but the Congress of the United States shall enact special laws for their management and disposition: Provided, That all revenues from or proceeds of the same, except as regards such part thereof as may be used or occupied for the civil, military, or naval purposes of the United States, or may be assigned for the use of the local government, shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other purposes.

ARTICLE III.

Until Congress shall provide for the government of such islands, all the civil, judicial, and military powers exercised by the officers of the existing government in said islands shall be vested in such person or persons and shall be exercised in such manner as the President of the United States shall direct; and the President shall have power to remove said officers and fill the vacancies so occasioned.

The existing treaties of the Hawaiian Islands with foreign nations shall forthwith cease and determine, being replaced by such treaties as may exist or as may be hereafter concluded between the United States and such foreign nations. The municipal legislation of the Hawaiian Islands, not enacted for the fulfillment of the treaties so extinguished, and not inconsistent with this treaty nor contrary to the Constitution of the United States, nor to any existing treaty of the United States, shall remain in force until the Congress of the United States shall otherwise determine.

Until legislation shall be enacted extending the United States customs laws and regulations to the Hawaiian Islands, the existing customs relations of the Hawaiian Islands with the United States and other countries shall remain unchanged.

ARTICLE IV.

The public debt of the Republic of Hawaii, lawfully existing at the date of the exchange of the ratifications of the treaty, including the amounts due to depositors in the Hawaiian Postal Savings Bank, is hereby assumed by the Government of the United States, but the liability of the United States in this regard shall in no case exceed $4,000,000. So long, however, as the existing government and the present commercial relations of the Hawaiian Islands are continued, as hereinbefore provided, said government shall continue to pay the interest on said debt.

ARTICLE V.

There shall be no further immigration of Chinese into the Hawaiian Islands, except upon such conditions as are now, or may hereafter be allowed by the laws

of the United States, and no Chinese, by reason of anything herein contained, shall be allowed to enter the United States from the Hawaiian Islands.

ARTICLE VI.

The President shall appoint five commissioners, at least two of whom shall be residents of the Hawaiian Islands, who shall, as soon as reasonable and practicable, recommend to Congress such legislation for the Territory of Hawaii as they shall deem necessary or proper.

ARTICLE VII.

This treaty shall be ratified by the President of the United States, by and with the advice and consent of the Senate, on the one part; and by the President of the Republic of Hawaii, by and with the advice and consent of the Senate, in accordance with the constitution of said Republic, on the other; and the ratifications hereof shall be exchanged at Washington as soon as possible.

In witness whereof the respective plenipotentiaries have signed the above articles and have hereunto affixed their seals.

Done in duplicate at the city of Washington, this sixteenth day of June, one thousand eight hundred and ninety-seven.

JOHN SHERMAN. [SEAL.]
FRANCIS MARCH HATCH. [SEAL.]
LORRIN A. THURSTON. [SEAL.]
WILLIAM A. KINNEY. [SEAL.]

(Senate Doc. No. 681, Fifty-fifth Congress, second session.)

JOINT RESOLUTION TO PROVIDE FOR ANNEXING THE HAWAIIAN ISLANDS TO THE UNITED STATES (30 STAT., 750).

Whereas the Government of the Republic of Hawaii having, in due form, signified its consent, in the manner provided by its constitution, to cede absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies, and also to cede and transfer to the United States the absolute fee and ownership of all public, Government, or Crown lands, public buildings or edifices, ports, harbors, military equipment, and all other public property of every kind and description belonging to the Government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining: Therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That said cession is accepted, ratified, and confirmed, and that the said Hawaiian Islands and their dependencies be, and they are hereby, annexed *as a part of the territory of the United States and are subject to the sovereign dominion thereof*, and that all and singular the property and rights hereinbefore mentioned are vested in the United States of America.

The existing laws of the United States relative to public lands shall not apply to such lands in the Hawaiian Islands; but the Congress of the United States shall enact special laws for their management and disposition: *Provided*, That all revenue from or proceeds of

the same, except as regards such part thereof as may be used or occupied for the civil, military, or naval purposes of the United States, or may be assigned for the use of the local government, *shall be used solely for the benefit of the inhabitants of the Hawaiian Islands* for educational and other public purposes.

Until Congress shall provide for the government of such islands all the civil, judicial, and military powers exercised by the officers of the existing government in said islands shall be vested in such person or persons and shall be exercised in such manner *as the President of the United States shall direct;* and the President shall have power to remove said officers and fill the vacancies so occasioned.

The existing treaties of the Hawaiian Islands with foreign nations shall forthwith cease and determine, being replaced by such treaties as may exist, or as may be hereafter concluded, between the United States and such foreign nations. *The municipal legislation of the Hawaiian Islands,* not enacted for the fulfillment of the treaties so extinguished, and not inconsistent with this joint resolution nor contrary to the Constitution of the United States nor to any existing treaty of the United States, *shall remain in force until the Congress of the United States shall otherwise determine.*

Until legislation shall be enacted extending the United States customs laws and regulations to the Hawaiian Islands *the existing customs relations of the Hawaiian Islands with the United States and other countries shall remain unchanged.*

The public debt of the Republic of Hawaii, lawfully existing at the date of the passage of this joint resolution, including the amounts due to depositors in the Hawaiian Postal Savings Bank, is hereby assumed by

the Government of the United States; but the liability of the United States in this regard shall in no case exceed four million dollars. *So long, however, as the existing Government and the present commercial relations of the Hawaiian Islands are continued as hereinbefore provided, said Government shall continue to pay the interest on said debt.*

There shall be no further immigration of Chinese into the Hawaiian Islands, except upon such conditions as are now or may hereafter be allowed by the laws of the United States; and *no Chinese, by reason of anything herein contained, shall be allowed to enter the United States from the Hawaiian Islands.*

The President shall appoint five commissioners, at least two of whom shall be residents of the Hawaiian Islands, who shall, as soon as reasonably practicable, *recommend to Congress such legislation concerning the Hawaiian Islands as they shall deem necessary or proper.*

SEC. 2. That the commissioners hereinbefore provided for shall be appointed by the President, by and with the advice and consent of the Senate.

SEC. 3. That the sum of one hundred thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, and to be immediately available, to be expended at the discretion of the President of the United States of America, for the purpose of carrying this joint resolution into effect.

Approved July 7, 1898.

AN ACT TO PROVIDE A GOVERNMENT FOR THE TERRITORY OF HAWAII

(31 Stat., 141.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

CHAPTER I.—GENERAL PROVISIONS.

DEFINITIONS.

SEC. 1. That the phrase "the laws of Hawaii," as used in this Act without qualifying words, shall mean the constitution and laws of the Republic of Hawaii, in force on the twelfth day of August, eighteen hundred and ninety-eight, at the time of the transfer of the sovereignty of the Hawaiian Islands to the United States of America.

The constitution and statute laws of the Republic of Hawaii then in force, set forth in a compilation made by Sidney M. Ballou under the authority of the legislature, and published in two volumes entitled "Civil Laws" and "Penal Laws," respectively, and in the Session Laws of the Legislature for the session of eighteen hundred and ninety-eight, are referred to in this Act as "Civil Laws," "Penal Laws," and "Session Laws."

TERRITORY OF HAWAII.

SEC. 2. That the islands acquired by the United States of America under an act of Congress entitled "Joint resolution to provide for annexing the Hawaiian Islands to the United States," approved July seventh, eighteen hundred and ninety-eight, *shall be known as the Territory of Hawaii.*

GOVERNMENT OF THE TERRITORY OF HAWAII

SEC. 3. That *a Territorial government is hereby established* over the said Territory, with its capital at Honolulu, on the island of Oahu.

CITIZENSHIP.

SEC. 4. *That all persons who were citizens of the Republic of Hawaii on August twelfth, eighteen hundred and ninety-eight, are hereby declared to be citizens of the United States and citizens of the Territory of Hawaii.*

And all citizens of the United States resident in the Hawaiian Islands who were resident there on or since August twelfth, eighteen hundred and ninety-eight, and all the citizens of the United States who shall hereafter reside in the Territory of Hawaii for one year shall be citizens of the Territory of Hawaii.

APPLICATION OF THE LAWS OF THE UNITED STATES.

SEC. 5. *That the Constitution, and, except as herein otherwise provided, all the laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States: Provided,* That sections eighteen hundred and fifty and eighteen hundred and ninety of the Revised Statutes of the United States shall not apply to the Territory of Hawaii.

LAWS OF HAWAII.

SEC. 6. That the laws of Hawaii not inconsistent with the Constitution or laws of the United States or the provisions of this act shall continue in force, subject to repeal or amendment by the legislature of Hawaii or the Congress of the United States.

SEC. 7. That the constitution of the Republic of

Hawaii and the laws of Hawaii, as set forth in the following acts, chapters, and sections of the civil laws, penal laws, and session laws, and relating to the following subjects, are hereby repealed:

CIVIL LAWS: Sections two and three, Promulgation of laws; chapter five, Flag and seal; sections thirty to thirty-three, inclusive, Tenders for supplies; chapter seven, Minister of foreign affairs; chapter eight, Diplomatic and consular agents; sections one hundred and thirty-four and one hundred and thirty-five, National museum; chapter twelve, Education of Hawaiian youths abroad; sections one hundred and fifty to one hundred and fifty-six, inclusive, Aid to board of education; chapter fourteen, Minister of the interior; sections one hundred and sixty-six to one hundred and sixty-eight, inclusive, one hundred and seventy-four and one hundred and seventy-five, Government lands; section one hundred and ninety, Board of commissioners of public lands; section four hundred and twenty-four, Bureau of agriculture and forestry; chapter thirty-one, Agriculture and manufactures; chapter thirty-two, Ramie; chapter thirty-three, Taro flour; chapter thirty-four, Development of resources; chapter thirty-five, Agriculture; section four hundred and seventy-seven, Brands; chapter thirty-seven, Patents; chapter thirty-eight, Copyrights; sections five hundred and fifty-six and five hundred and fifty-seven, Railroad subsidy; chapter forty-seven, Pacific cable; chapter forty-eight, Hospitals; chapter fifty-one, Coins and currency; chapter fifty-four, Consolidation of public debt; chapter fifty-six, Post-office; chapter fifty-seven, Exemptions from postage; chapter fifty-eight, Postal savings banks; chapter sixty-five, Import duties; chapter sixty-six, Imports; chapter sixty-seven, Ports

of entry and collection districts; chapter sixty-eight, Collectors; chapter sixty-nine Registry of vessels; section one thousand and eleven, Custom-house charges; section eleven hundred and two, Elections; section eleven hundred and thirty-two, Appointment of magistrate; last clause of first subdivision and fifth subdivision of section eleven hundred and forty-four, first subdivision of section eleven hundred and forty-five, Jurisdiction; sections eleven hundred and seventy-three to eleven hundred and seventy-eight, inclusive, Translation of decisions; section eleven hundred and eighty-eight, Clerks of court; sections thirteen hundred and twenty-nine, thirteen hundred and thirty-one, thirteen hundred and thirty-two, thirteen hundred and forty-seven to thirteen hundred and fifty-four, inclusive, Juries; sections fifteen hundred and nine to fifteen hundred and fourteen, inclusive, Maritime matters; chapter one hundred and two, Naturalization; section sixteen hundred and seventy-eight, Habeas corpus; chapter one hundred and eight, Arrest of debtors; subdivisions six, seven, ten, twelve to fourteen of section seventeen hundred and thirty-six, Garnishment; sections seventeen hundred and fifty-five to seventeen hundred and fifty-eight, inclusive, Liens on vessels; chapter one hundred and sixteen, Bankruptcy; and sections eighteen hundred and twenty-eight to eighteen hundred and thirty-two, inclusive, Water rights.

PENAL LAWS: Chapter six, Treason; section sixty-five to sixty-seven, inclusive, Foot binding; chapter seventeen, Violation of postal laws; section three hundred and fourteen, Blasphemy; sections three hundred and seventy-one to three hundred and seventy-two, inclusive, Vagrants; sections four hundred and eleven to four hundred and thirteen, inclusive, Manufacture of liquors; chapter forty-three, Offenses on the

high seas and other waters; sections five hundred and ninety-five and six hundred and two to six hundred and five, inclusive, Jurisdiction; section six hundred and twenty-three, Procedure; section seven hundred and seven hundred and one, Imports; section seven hundred and fifteen, Auction license; section seven hundred and forty-five, Commercial travelers; sections seven hundred and forty-eight to seven hundred and fifty-five, inclusive, Firearms; sections seven hundred and ninety-six to eight hundred and nine, inclusive, Coasting trade; sections eight hundred and eleven and eight hundred and twelve, Peddling foreign goods; sections eight hundred and thirteen to eight hundred and fifteen, inclusive, Importation of live stock; section eight hundred and nineteen, Imports; sections eight hundred and eighty-six to nine hundred and six, inclusive, Quarantine; section eleven hundred and thirty-seven, Consuls and consular agents; chapter sixty-seven, whale ships; sections eleven hundred and forty-five to eleven hundred and seventy-nine, inclusive, and twelve hundred and four to twelve hundred and nine, inclusive, arrival, entry, and departure of vessels; chapters sixty-nine to seventy-six, inclusive, navigation and other matters within the exclusive jurisdiction of the United States; sections thirteen hundred and forty-seven and thirteen hundred and forty-eight, fraudulent exportation; chapter seventy-eight, Masters and servants; chapter ninety-three, Immigration; sections sixteen hundred and one, sixteen hundred and eight, and sixteen hundred and twelve, Agriculture and forestry; chapter ninety-six, Seditious offenses; and chapter ninety-nine, Sailing regulations.

SESSION LAWS: Act fifteen, Elections; act twenty-six, Duties; act twenty-seven, Exemptions from duties; act

thirty-two, Registry of vessels; section four of act thirty-eight, Importation of live stock; act forty-eight, Pacific cable; act sixty-five, Consolidation of public debt; act sixty-six, Ports of entry; and act sixty-eight, Chinese immigration.

CERTAIN OFFICES ABOLISHED.

SEC. 8. That the offices of President, minister of foreign affairs, minister of the interior, minister of finance, minister of public instruction, auditor-general, deputy auditor-general, surveyor-general, marshal, and deputy marshal of the Republic of Hawaii are hereby abolished.

AMENDMENT OF OFFICIAL TITLES.

SEC. 9. That wherever the words "President of the Republic of Hawaii," or "Republic of Hawaii," or "Government of the Republic of Hawaii," or their equivalents, occur in the laws of Hawaii not repealed by this act, they are hereby amended to read "Governor of the Territory of Hawaii," or "Territory of Hawaii," or "Government of the Territory of Hawaii," or their equivalents, as the context requires.

CONSTRUCTION OF EXISTING STATUTES.

SEC. 10. That all rights of action, suits at law and in equity, prosecutions, and judgments existing prior to the taking effect of this act shall continue to be as effectual as if this act had not been passed; and those in favor of or against the Republic of Hawaii, and not assumed by or transferred to the United States, shall be equally valid in favor of or against the government of the Territory of Hawaii. *All offenses which by statute then in force were punishable as offenses against the*

Republic of Hawaii shall be punishable as offenses against the government of the Territory of Hawaii, unless such statute is inconsistent with this act, or shall be repealed or changed by law. No person shall be subject to imprisonment for nonpayment of taxes nor for debt. *All criminal and penal proceedings then pending in the courts of the Republic of Hawaii shall be prosecuted to final judgment and execution in the name of the Territory of Hawaii;* all such proceedings, all actions at law, suits in equity, and other proceedings then pending in the courts of the Republic of Hawaii shall be carried on to final judgment and execution in the corresponding courts of the Territory of Hawaii; and all process issued and sentences imposed before this act takes effect shall be as valid as if issued or imposed in the name of the Territory of Hawaii: *Provided*, That no suit or proceedings shall be maintained for the specific performance of any contract heretofore or hereafter entered into for personal labor or service, nor shall any remedy exist or be enforced for breach of any such contract, except in a civil suit or proceeding instituted solely to recover damages for such breach: *Provided further*, That the provisions of this section shall not modify or change the laws of the United States applicable to merchant seamen.

That all contracts made since August twelfth, eighteen hundred and ninety-eight, by which persons are held for service for a definite term, are hereby declared null and void and terminated, and no law shall be passed to enforce said contracts in any way; and it shall be the duty of the United States marshal to at once notify such persons so held of the termination of their contracts.

That the act approved February twenty-sixth, eighteen hundred and eighty-five, "To prohibit the

importation and migration of foreigners and aliens under contract or agreement to perform labor in the United States, its Territories, and the District of Columbia," and the acts amendatory thereof and supplemental thereto, be, and the same are hereby, extended to and made applicable to the Territory of Hawaii.

STYLE OF PROCESS.

SEC. 11. That the style of all process in the Territorial courts *shall hereafter run in the name of "The Territory of Hawaii,"* and all prosecutions shall be carried on in the name and by the authority of the Territory of Hawaii.

CHAPTER II.—THE LEGISLATURE.

THE LEGISLATIVE POWER.

SEC. 12. That the legislature of the Territory of Hawaii shall consist of two houses, styled, respectively, the senate and house of representatives, which shall organize and sit separately, except as otherwise herein provided.

The two houses shall be styled "The legislature of the Territory of Hawaii."

SEC. 13. That no person shall sit as a senator or representative in the legislature unless elected under and in conformity with this act.

GENERAL ELECTIONS.

SEC. 14. That a general election shall be held on the Tuesday next after the first Monday in November, nineteen hundred, and every second year thereafter: *Provided, however*, That the governor may, in his discretion, on thirty days' notice, order a special election before the first general election, if, in his opinion, the public interests shall require a special session of the legislature.

EACH HOUSE JUDGE OF QUALIFICATIONS OF MEMBERS.

SEC. 15. That each house shall be the judge of the elections, returns, and qualifications of its own members.

DISQUALIFICATIONS OF LEGISLATORS.

SEC. 16. That no member of the legislature shall, during the term for which he is elected, be appointed or elected to any office of the Territory of Hawaii.

DISQUALIFICATIONS OF GOVERNMENT OFFICERS AND EMPLOYEES.

SEC. 17. That no person holding office in or under or by authority of the Government of the United States or of the Territory of Hawaii shall be eligible to election to the legislature, or to hold the position of a member of the same while holding said office.

SEC. 18. No idiot or insane person, and no person who shall be expelled from the legislature for giving or receiving bribes or being accessory thereto, and no person who, in due course of law, shall have been convicted of any criminal offense punishable by imprisonment, whether with or without hard labor, for a term exceeding one year, whether with or without fine, shall register to vote or shall vote or hold any office in, or under, or by authority of, the government, unless the person so convicted shall have been pardoned and restored to his civil rights.

OATH OF OFFICE.

SEC. 19. That every member of the legislature, and all officers of the government of the Territory of Hawaii shall take the following oath or affirmation:

I solemnly swear (or affirm), in the presence of

Almighty God, that I will faithfully support the Constitution and laws of the United States, and conscientiously and impartially discharge my duties as a member of the legislature, or as an officer of the government of the Territory of Hawaii (as the case may be).

OFFICERS AND RULES.

SEC. 20. That the senate and house of representatives shall each choose its own officers, determine the rules of its own proceedings, not inconsistent with this act, and keep a journal.

AYES AND NOES.

SEC. 21. That the ayes and noes of the members on any question shall, at the desire of one-fifth of the members present, be entered on the journal.

QUORUM.

SEC. 22. That a majority of the number of members to which each house is entitled shall constitute a quorum of such house for the conduct of ordinary business, of which quorum a majority vote shall suffice; but the final passage of a law in each house shall require the vote of a majority of all the members to which such house is entitled.

SEC. 23. That a smaller number than a quorum may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each house may provide.

SEC. 24. That, for the purpose of ascertaining whether there is a quorum present, the chairman shall count the number of members present.

PUNISHMENT OF PERSONS NOT MEMBERS.

SEC. 25. That each house may punish by fine, or by imprisonment not exceeding thirty days, any person not a member of either house who shall be guilty of disrespect of such house by any disorderly or contemptuous behavior in its presence or that of any committee thereof; or who shall, on account of the exercise of any legislative function, threaten harm to the body or estate of any of the members of such house; or who shall assault, arrest, or detain any witness or other person ordered to attend such house, on his way going to or returning therefrom; or who shall rescue any person arrested by order of such house.

But the person charged with the offense shall be informed, in writing, of the charge made against him, and have an opportunity to present evidence and be heard in his own defense.

COMPENSATION OF MEMBERS.

SEC. 26. That the members of the legislature shall receive for their services, in addition to mileage at the rate of ten cents a mile each way, the sum of four hundred dollars for each regular session of the legislature, payable in three equal installments on and after the first, thirtieth, and fiftieth days of the session, and the sum of two hundred dollars for each extra session of the legislature.

PUNISHMENT OF MEMBERS.

SEC. 27. That each house may punish its own members for disorderly behavior or neglect of duty, by censure, or by a two thirds vote suspend or expel a member.

EXEMPTION FROM LIABILITY.

SEC. 28. That no member of the legislature shall be held to answer before any other tribunal for any words uttered in the exercise of his legislative functions in either house.

EXEMPTION FROM ARREST.

SEC. 29. That the members of the legislature shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during their attendance at the sessions of the respective houses, and in going to and returning from the same: *Provided*, That such privilege as to going and returning shall not cover a period of over ten days each way.

THE SENATE.

NUMBER OF MEMBERS.

SEC. 30. That the Senate shall be composed of fifteen members, who shall hold office for four years: *Provided, however*, That of the senators elected at the first general election, two from the first district, one from the second, three from the third, and one from the fourth district shall hold office for two years only, the details of such apportionment to be provided for by the legislature.

VACANCIES.

SEC. 31. That vacancies caused by death, resignation, or otherwise shall be filled for the unexpired term at general or special elections.

SENATORIAL DISTRICTS.

SEC. 32. That for the purpose of representation in the senate, until otherwise provided by law, the Terri-

tory is divided into the following senatorial districts, namely:

First district: The island of Hawaii.

Second district: The islands of Maui, Molokai, Lanai, and Kahoolawe.

Third district: The island of Oahu.

Fourth district: The islands of Kauai and Niihau.

SEC. 33. That the electors in the said districts shall be entitled to elect senators as follows:

In the first district, four;

In the second district, three;

In the third district, six;

In the fourth district, two.

QUALIFICATIONS OF SENATORS.

SEC. 34. That in order to be eligible to election as a senator a person shall—

Be a male citizen of the United States;

Have attained the age of thirty years;

Have resided in the Hawaiian Islands not less than three years and be qualified to vote for senators in the district from which he is elected.

THE HOUSE OF REPRESENTATIVES.

NUMBER OF REPRESENTATIVES.

SEC. 35. That the house of representatives shall be composed of thirty members, elected, except as herein provided, every second year.

TERM OF OFFICE.

SEC. 36. That the term of office of the representatives elected at any general or special election shall be until the next general election held thereafter.

VACANCIES.

SEC. 37. That vacancies in the office of representative caused by death, resignation, or otherwise shall be filled for the unexpired term at special elections.

REPRESENTATIVE DISTRICTS.

SEC. 38. That for the purpose of representation in the house of representatives, until otherwise provided by law, the Territory is divided into the following representative districts, namely:

First district. That portion of the island of Hawaii known as Puna, Hilo, and Hamakua.

Second district. That portion of the island of Hawaii known as Kau, Kona, and Kohala.

Third district. The islands of Maui, Molokai, Lanai, and Kahoolawe.

Fourth district. That portion of the island of Oahu lying east and south of Nuuanu street and a line drawn in extension thereof from the Nuuanu Pali to Mokapu Point.

Fifth district. That portion of the island of Oahu lying west and north of the fourth district.

Sixth district. The islands of Kauai and Niihau.

APPORTIONMENT.

SEC. 39. That the electors in the said districts shall be entitled to elect representatives as follows:

In the first district, four.

In the second district, four.

In the third district, six.

In the fourth district, six.

In the fifth district, six.

In the sixth district, four.

QUALIFICATIONS OF REPRESENTATIVES.

SEC. 40. That in order to be eligible to be a member of the house of representatives a person shall, at the time of election—

Have attained the age of twenty-five years;

Be a male citizen of the United States;

Have resided in the Hawaiian Islands not less than three years;

And shall be qualified to vote for representatives in the district from which he is elected.

LEGISLATION.

SESSIONS OF THE LEGISLATURE.

SEC. 41. That the first regular session of the legislature shall be held on the third Wednesday in February, nineteen hundred and one, and biennially thereafter, in Honolulu.

SEC. 42. That neither house shall adjourn during any session for more than three days, or sine die, without the consent of the other.

SEC. 43. That each session of the legislature shall continue not longer than sixty days, excluding Sundays and holidays: *Provided, however*, That the governor may extend such session for not more than thirty days.

The governor may convene the legislature, or the senate alone, in special session, and, in case the seat of government shall be unsafe, from an enemy, riot, or insurrection, or any dangerous disease, direct that any regular or special session shall be held at some other than the regular meeting place.

ENACTING CLAUSE—ENGLISH LANGUAGE.

SEC. 44. That the enacting clause of all laws shall be, "Be it enacted by the legislature of the Territory of Hawaii."

All legislative proceedings shall be conducted in the English language.

TITLE OF LAWS.

SEC. 45. That each law shall embrace but one subject, which shall be expressed in its title.

READING OF BILLS.

SEC. 46. That a bill in order to become a law shall, except as herein provided, pass three readings in each house, on separate days, the final passage of which in each house shall be by a majority vote of all the members to which such house is entitled, taken by ayes and noes and entered upon its journal.

CERTIFICATION OF BILLS FROM ONE HOUSE TO THE OTHER.

SEC. 47. That every bill when passed by the house in which it originated, or in which amendments thereto shall have originated, shall immediately be certified by the presiding officer and clerk and sent to the other house for consideration.

SIGNING BILLS.

SEC. 48. That, except as herein provided, all bills passed by the legislature shall, in order to be valid, be signed by the governor.

VETO OF GOVERNOR.

SEC. 49. That every bill which shall have passed the legislature shall be certified by the presiding officers

and clerks of both houses, and shall thereupon be presented to the governor. If he approves it, he shall sign it, and it shall become a law. If the governor does not approve such bill, he may return it, with his objections, to the legislature.

He may veto any specific item or items in any bill which appropriates money for specific purposes; but shall veto other bills, if at all, only as a whole.

PROCEDURE UPON RECEIPT OF VETO.

SEC. 50. That upon the receipt of a veto message from the governor each house of the legislature shall enter the same at large upon its journal and proceed to reconsider such bill, or part of a bill, and again vote upon it by ayes and noes, which shall be entered upon its journal.

If after such reconsideration such bill, or part of a bill, shall be approved by a two-thirds vote of all the members to which each house is entitled, it shall thereby become law.

FAILURE TO SIGN OR VETO.

SEC. 51. That if the governor neither signs nor vetoes a bill within ten days after it is delivered to him it shall become a law without his signature, unless the legislature adjourns sine die prior to the expiration of such ten days.

If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislature by their adjournment prevents its return, in which case it shall not be a law.

APPROPRIATIONS.

SEC. 52. That appropriations, except as otherwise herein provided, shall be made biennially by the legislature: *Provided, however*, That pending the time when this act shall take effect and until a session of the legislature of the Territory of Hawaii shall be held, the President may, in his discretion, authorize and direct the use of such money in the treasury of the Republic of Hawaii, as well as of the Territory of Hawaii, as he shall think requisite and proper for carrying on the government of the Territory of Hawaii, the preservation of the public health, the completion of the sewerage system of the city of Honolulu, and such other expenditures as in the President's judgment shall seem to be appropriate.

SEC. 53. That the governor shall submit to the legislature, at each regular session, estimates for appropriations for the succeeding biennial period.

SEC. 54. That in case of failure of the legislature to pass appropriation bills providing for payments of the necessary current expenses of carrying on the government and meeting its legal obligations as the same are provided for by the then existing laws, the governor shall, upon the adjournment of the legislature, call it in extra session for the consideration of appropriation bills, and until the legislature shall have acted the treasurer may, with the advice of the governor, make such payments, for which purpose the sums appropriated in the last appropriation bills shall be deemed to have been reappropriated. And all legislative and other appropriations made prior to the date when this act shall take effect shall be available to the government of the Territory of Hawaii.

LEGISLATIVE POWER.

SEC. 55. That the legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States locally applicable. The legislature, at its first regular session after the census enumeration shall be ascertained, and from time to time thereafter, shall reapportion the membership in the senate and house of representatives among the senatorial and representative districts on the basis of the population in each of said districts who are citizens of the Territory; but the legislature shall not grant to any corporation, association, or individual any special or exclusive privilege, immunity, or franchise without the approval of Congress; nor shall it grant private charters, but it may by general act permit persons to associate themselves together as bodies corporate for manufacturing, agricultural, and other industrial pursuits, and for conducting the business of insurance, savings banks, banks of discount and deposit (but not of issue), loan, trust, and guaranty associations, for the establishment and conduct of cemeteries, and for the construction and operation of railroads, wagon roads, vessels, and irrigating ditches, and the colonization and improvement of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any other benevolent, charitable, or scientific association: *Provided*, That no corporation, domestic or foreign, shall acquire and hold real estate in Hawaii in excess of one thousand acres; and all real estate acquired or held by such corporation or association contrary thereto shall be forfeited and escheat to the United States, but existing vested rights in real estate shall not be impaired. No divorce shall be granted by the legislature, nor shall any divorce be

granted by the courts of the Territory unless the applicant therefor shall have resided in the Territory for two years next preceding the application, but this provision shall not affect any action pending when this act takes effect; nor shall any lottery or sale of lottery tickets be allowed; nor shall spirituous or intoxicating liquors be sold except under such regulations and restrictions as the Territorial legislature shall provide; nor shall any public money be appropriated for the support or benefit of any sectarian, denominational, or private school, or any school not under the exclusive control of the government; nor shall the government of the Territory of Hawaii, or any political or municipal corporation or subdivision of the Territory, make any subscription to the capital stock of any incorporated company, or in any manner lend its credit for the use thereof; nor shall any debt be authorized to be contracted by or on behalf of the Territory, or any political or municipal corporation or subdivision thereof, except to pay the interest upon the existing indebtedness, to suppress insurrection, or to provide for the common defense, except that in addition to any indebtedness created for such purposes the legislature may authorize loans by the Territory, or any such subdivision thereof, for the erection of penal, charitable, and educational institutions, and for public buildings, wharves, roads, and harbor and other public improvements, but the total of such indebtedness incurred in any one year by the Territory or any subdivision shall not exceed one per centum upon the assessed value of taxable property of the Territory or subdivision thereof, as the case may be, as shown by the last general assessment for taxation, and the total indebtedness for the Territory shall not at any time be extended beyond

seven per centum of such assessed value, and the total indebtedness of any subdivision shall not at any time be extended beyond three per centum of such assessed value, but nothing in this provision shall prevent the refunding of any existing indebtedness at any time; nor shall any such loan be made upon the credit of the public domain or any part thereof, nor shall any bond or other instrument of any such indebtedness be issued unless made redeemable in not more than five years and payable in not more than fifteen years from the date of the issue thereof; nor shall any such bond or indebtedness be incurred until approved by the President of the United States.

TOWN, CITY, AND COUNTY GOVERNMENT.

SEC. 56. That the legislature may create counties and town and city municipalities within the Territory of Hawaii and provide for the government thereof.

ELECTIONS.

EXEMPTION OF ELECTORS ON ELECTION DAY.

SEC. 57. That every elector shall be privileged from arrest on election day during his attendance at election and in going to and returning therefrom, except in case of breach of the peace then committed, or in case of treason or felony.

SEC. 58. That no elector shall be so obliged to perform military duty on the day of election as to prevent his voting, except in time of war or public danger, or in case of absence from his place of residence in actual military service, in which case provision may be made by law for taking his vote.

METHOD OF VOTING FOR REPRESENTATIVES.

SEC. 59. That each voter for representative may cast a vote for as many representatives as are to be elected from the representative district in which he is entitled to vote.

The required number of candidates receiving the highest number of votes in the respective representative districts shall be the representatives for such districts.

QUALIFICATIONS OF VOTERS FOR REPRESENTATIVES.

SEC. 60. That in order to be qualified to vote for representatives a person shall—

First. Be a male citizen of the United States.

Second. Have resided in the Territory not less than one year preceding and in the representative district in which he offers to register not less than three months immediately preceding the time at which he offers to register.

Third. Have attained the age of twenty-one years.

Fourth. Prior to each regular election, during the time prescribed by law for registration, have caused his name to be entered on the register of voters for representatives for his district.

Fifth. Be able to speak, read, and write the English or Hawaiian language.

METHOD OF VOTING FOR SENATORS.

SEC. 61. That each voter for senator may cast one vote for each senator to be elected from the senatorial district in which he is entitled to vote.

The required number of candidates receiving the highest number of votes in the respective senatorial districts shall be the senators for such district.

QUALIFICATIONS OF VOTERS FOR SENATORS AND IN ALL OTHER ELECTIONS.

SEC. 62. That in order to be qualified to vote for senators and for voting in all other elections in the Territory of Hawaii a person must possess all the qualifications and be subject to all the conditions required by this act of voters for representatives.

SEC. 63. That no person shall be allowed to vote who is in the Territory by reason of being in the Army or Navy or by reason of being attached to troops in the service of the United States.

SEC. 64. That the rules and regulations for administering oaths and holding elections set forth in Ballou's Compilation, Civil Laws, Appendix, and the list of registering districts and precincts appended, are continued in force with the following changes, to wit:

Strike out the preliminary proclamation and sections one to twenty-six, inclusive, sections thirty and thirty-nine, the second and third paragraphs of section forty-eight, the second paragraph of section fifty, and sections sixty-two, sixty-three, and sixty-six, second paragraph of section one hundred.

In section twenty-nine strike out all after the word "Niihau" and in lieu thereof insert: "The boards of registration existing at the date of the approval of this act shall go out of office, and new boards, which shall consist of three members each, shall be appointed by the governor, by and with the advice and consent of the senate, whose terms of office shall be four years. Appointments made by the governor when the senate is not in session shall be valid until the succeeding meeting of that body."

In section thirty-one strike out "the first day of April and the thirtieth day of June, in the year

eighteen hundred and ninety-seven," and insert in lieu thereof "the last day of August and the tenth day of October, in the year nineteen hundred."

Strike out the words "and the detailed record" in sections fifty-two and one hundred and twelve.

Strike out "marshal" wherever it occurs and insert in lieu thereof "high sheriff."

Strike out of section fifty-three the words "except as provided in section one hundred and fourteen hereof."

In sections fifty-three, fifty-four, fifty-six, fifty-seven, fifty-nine, sixty, seventy-one, seventy-five, eighty-six, ninety-two, ninety-three, ninety-four, ninety-five, one hundred and eleven, one hundred and twelve, and one hundred and thirteen strike out the words "minister" and "minister of the interior" wherever they occur and insert in lieu thereof the words "secretary of the Territory."

In section fifty-six, paragraph three, strike out "interior office" and insert "office of the secretary of the Territory."

In section fifty-six, first paragraph, after the words "candidate for election" insert "to the legislature;" and in the last paragraph strike out the word "only."

Strike out the word "elective" in section sixty-four.

In sections twenty-seven, sixty-four, sixty-five, sixty-eight, seventy, and seventy-two strike out the words "minister of the interior" or "minister" wherever they occur and insert in lieu thereof the word "governor."

Amend section sixty-seven so that it will read: "At least forty days before any election the governor shall issue an election proclamation and transmit copies of the same to the several boards of inspectors throughout the Territory, or where such election is to be held."

In section seventy-five strike out the word "perfectly," and in section seventy-six strike out "in" and insert "on."

In section one hundred and twelve strike out "Interior Department" and insert in lieu thereof "office of the secretary of the Territory."

In section one hundred and fourteen strike out the word "Republic" wherever it occurs and insert in lieu thereof "Territory."

In section one hundred and fifteen strike out the words "minister" and "minister of the interior" and insert in lieu thereof "treasurer," and strike out all after the word "refreshments:" *Provided, however*, That for the holding of a special election before the first general election the governor may prescribe the time during which the boards of registration shall meet and the registration be made.

SEC. 65. That the legislature of the Territory may from time to time establish and alter the boundaries of election districts and voting precincts and apportion the senators and representatives to be elected from such districts.

CHAPTER 3.—THE EXECUTIVE.

THE EXECUTIVE POWER.

SEC. 66. That the executive power of the government of the Territory of Hawaii shall be vested in a governor, who shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and shall hold office for four years and until his successor shall be appointed and qualified, unless sooner removed by the President. He shall be not less than thirty-five years of age; shall be a citizen of the Territory of Hawaii; shall be com-

mander in chief of the militia thereof; may grant pardons or reprieves for offenses against the laws of the said Territory and reprieves for offenses against the laws of the United States until the decision of the President is made known thereon.

ENFORCEMENT OF LAW.

SEC. 67. That the governor shall be responsible for the faithful execution of the laws of the United States and of the Territory of Hawaii within the said Territory, and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the Territory of Hawaii, or summon the posse comitatus, or call out the militia of the Territory to prevent or suppress lawless violence, invasion, insurrection, or rebellion in said Territory, and he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of habeas corpus, or place the Territory, or any part thereof, under martial law until communication can be had with the President and his decision thereon made known.

GENERAL POWERS OF THE GOVERNOR.

SEC. 68. That all the powers and duties which, by the laws of Hawaii, are conferred upon or required of the President or any minister of the Republic of Hawaii (acting alone or in connection with any other officer or person or body) or the cabinet or executive council, and not inconsistent with the Constitution or laws of the United States, are conferred upon and required of the governor of the Territory of Hawaii, unless otherwise provided.

SECRETARY OF THE TERRITORY.

SEC. 69. That there shall be a secretary of the said Territory, who shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and who shall be a citizen of the Territory of Hawaii and hold his office for four years and until his successor shall be appointed and qualified, unless sooner removed by the President. He shall record and preserve all the laws and proceedings of the legislature and all acts and proceedings of the governor, and promulgate proclamations of the governor. He shall, within thirty days after the end of each session of the legislature, transmit to the President, the President of the Senate, and the Speaker of the House of Representatives of the United States one copy each of the laws and journals of such session. He shall transmit to the President, semi-annually, on the first days of January and July, a copy of the executive proceedings, and shall perform such other duties as are prescribed in this act or as may be required of him by the legislature of Hawaii.

ACTING GOVERNOR IN CERTAIN CONTINGENCIES.

SEC. 70. That in case of the death, removal, resignation, or disability of the governor, or his absence from the Territory, the secretary shall exercise all the powers and perform all the duties of governor during such vacancy, disability, or absence, or until another governor is appointed and qualified.

ATTORNEY-GENERAL.

SEC. 71. That there shall be an attorney-general, who shall have the powers and duties of the attorney-general and those of the powers and duties of the min-

ister of the interior which relate to prisons, prisoners, and prison inspectors, notaries public, and escheat of lands under the laws of Hawaii, except as changed by this act and subject to modification by the legislature.

TREASURER.

SEC. 72. That there shall be a treasurer, who shall have the powers and duties of the minister of finance and those of the powers and duties of the minister of the interior which relate to licenses, corporations, companies, and partnerships, business conducted by married women, newspapers, registry of conveyances, and registration of prints, labels, and trade-marks under the laws of Hawaii, except as changed in this act and subject to modification by the legislature.

COMMISSIONER OF PUBLIC LANDS.

SEC. 73. That the laws of Hawaii relating to public lands, the settlement of boundaries, and the issuance of patents on land-commission awards, except as changed by this act, shall continue in force until Congress shall otherwise provide. That, subject to the approval of the President, all sales, grants, leases, and other dispositions of the public domain, and agreements concerning the same, and all franchises granted by the Hawaiian government in conformity with the laws of Hawaii between the seventh day of July, eighteen hundred and ninety-eight, and twenty-eighth day of September, eighteen hundred and ninety-nine, are hereby ratified and confirmed. In said laws "land patent" shall be substituted for "royal patent;" "commissioner of public lands" for "minister of the interior," "agent of public lands," and "commissioners of public lands," or their equivalents; and the words "that I am a citizen of the United States," or

"that I have declared my intention to become a citizen of the United States, as required by law," for the words "that I am a citizen by birth (or naturalization) of the Republic of Hawaii," or "that I have received letters of denization under the Republic of Hawaii," or "that I have received a certificate of special right of citizenship from the Republic of Hawaii." And no lease of agricultural land shall be granted, sold, or renewed by the government of the Territory of Hawaii for a longer period than five years until Congress shall otherwise direct. All funds arising from the sale or lease or other disposal of such lands shall be appropriated by the laws of the government of the Territory of Hawaii and applied to such uses and purposes for the benefit of the inhabitants of the Territory of Hawaii as are consistent with the joint resolution of annexation, approved July seventh, eighteen hundred and ninety-eight: *Provided*, There shall be excepted from the provisions of this section all lands heretofore set apart, or reserved, by Executive order, or orders, by the President of the United States

COMMISSIONER OF AGRICULTURE AND FORESTRY.

SEC. 74. That the laws of Hawaii relating to agriculture and forestry, except as changed by this act, shall continue in force, subject to modification by Congress or the legislature. In said laws "commissioner of agriculture and forestry" shall be substituted, respectively, for "bureau," "bureau of agriculture and forestry," "commissioner," "commissioners of agriculture," and "commissioners for the island of Oahu."

SUPERINTENDENT OF PUBLIC WORKS.

SEC. 75. That there shall be a superintendent of public works, who shall have the powers and duties of

the superintendent of public works and those of the powers and duties of the minister of the interior which relate to streets and highways, harbor improvements, wharves, landings, waterworks, railways, electric light and power, telephone lines, fences, pounds, brands, weights and measures, fires and fireproof buildings, explosives, eminent domain, public works, markets, buildings, parks and cemeteries, and other grounds and lands now under the control and management of the minister of the interior, and those of the powers and duties of the minister of finance and collector-general which relate to pilots and harbor masters under the laws of Hawaii, except as changed by this act and subject to modification by the legislature. In said laws the word "legislature" shall be substituted for "councils" and the words "the circuit court" for "the Hawaiian Postal Savings Bank."

SUPERINTENDENT OF PUBLIC INSTRUCTION.

SEC. 76. That there shall be a superintendent of public instruction, who shall have the powers and perform the duties conferred upon and required of the minister of public instruction by the laws of Hawaii as amended by this act, and subject to modification by the legislature.

It shall be the duty of the United States Commissioner of Labor to collect, assort, arrange, and present in annual reports statistical details relating to all departments of labor in the Territory of Hawaii, especially in relation to the commercial, industrial, social, educational, and sanitary condition of the laboring classes, and to all such other subjects as Congress may by law direct. The said commissioner is especially charged to ascertain, at as early a date as possible, and as often thereafter as such information may be required,

the highest, lowest, and average number of employees engaged in the various industries in the Territory, to be classified as to nativity, sex, hours of labor, and conditions of employment, and to report the same to Congress.

AUDITOR AND DEPUTY AUDITOR.

SEC. 77. That there shall be an auditor and deputy auditor, who shall have the powers and duties conferred upon and required of the auditor-general and deputy auditor-general, respectively, by act thirty-nine of the session laws, as amended by this act, subject to modification by the legislature. In said act "officer" shall be substituted for "minister" where used without other designation.

SURVEYOR.

SEC. 78. That there shall be a surveyor, who shall have the powers and duties heretofore attached to the surveyor-general, except such as relate to the geodetic survey of the Hawaiian Islands.

HIGH SHERIFF.

SEC. 79. That there shall be a high sheriff and deputies, who shall have the powers and duties of the marshal and deputies of the Republic of Hawaii under the laws of Hawaii, except as changed by this act, and subject to modification by the legislature.

APPOINTMENT, REMOVAL, TENURE, AND SALARIES OF OFFICERS.

SEC. 80. That the President shall nominate and, by and with the advice and consent of the Senate, appoint the chief justice and justices of the supreme court, the judges of the circuit courts, who shall hold

their respective offices for the term of four years, unless sooner removed by the President; and the governor shall nominate and, by and with the advice and consent of the senate of the Territory of Hawaii, appoint the attorney-general, treasurer, commissioner of public lands, commissioner of agriculture and forestry, superintendent of public works, superintendent of public instruction, auditor, deputy auditor, surveyor, high sheriff, members of the board of health, commissioners of public instruction, board of prison inspectors, board of registration and inspectors of election, and any other boards of a public character that may be created by law; and he may make such appointments when the senate is not in session by granting commissions, which shall, unless such appointments are confirmed, expire at the end of the next session of the senate. He may, by and with the advice and consent of the senate of the Territory of Hawaii, remove from office any of such officers. All such officers shall hold office for four years and until their successors are appointed and qualified, unless sooner removed, except the commissioners of public instruction and the members of said boards, whose terms of office shall be as provided by the laws of the Territory of Hawaii.

The manner of appointment and removal and the tenure of all other officers shall be as provided by law; and the governor may appoint or remove any officer whose appointment or removal is not otherwise provided for.

The salaries of all officers other than those appointed by the President shall be as provided by the legislature, but those of the chief justice and the justices of the supreme court and judges of the circuit courts shall not be diminished during their term of office.

All officers appointed under the provisions of this section shall be citizens of the Territory of Hawaii.

All persons holding office in the Hawaiian Islands at the time this act takes effect shall continue to hold their respective offices until their successors are appointed and qualified, but not beyond the end of the first session of the senate of the Territory of Hawaii unless reappointed as herein provided.

CHAPTER IV.

THE JUDICIARY.

SEC. 81. That the judicial power of the Territory shall be vested in one supreme court, circuit courts, and in such inferior courts as the legislature may from time to time establish. *And until the legislature shall otherwise provide, the laws of Hawaii heretofore in force concerning the several courts and their jurisdiction and procedure shall continue in force except as herein otherwise provided.*

SUPREME COURT.

SEC. 82. That the supreme court shall consist of a chief justice and two associate justices, who shall be citizens of the Territory of Hawaii and shall be appointed by the President of the United States, by and with the advice and consent of the Senate of the United States, and may be removed by the President: *Provided, however,* That in case of the disqualification or absence of any justice thereof, in any cause pending before the court, on the trial and determination of said cause his place shall be filled as provided by law.

LAWS CONTINUED IN FORCE.

SEC. 83. *That the laws of Hawaii relative to the judicial department, including civil and criminal procedure, except as amended by this act, are continued in force, sub-*

ject to modification by Congress or the legislature. The *provisions of said laws* or any laws of the Republic of Hawaii which *require juries to be composed of aliens or foreigners only, or to be constituted by impaneling natives of Hawaii only,* in civil and criminal cases specified in said laws *are repealed,* and all juries shall hereafter be constituted *without reference to the race or place of nativity of the jurors; but no person who is not a male citizen of the United States* and twenty-one years of age and *who can not understandingly speak, read, and write the English language* shall be a qualified juror or grand juror in the Territory of Hawaii. *No person shall be convicted in any criminal case except by unanimous verdict of the jury.* No plaintiff or defendant in any suit or proceeding in a court of the Territory of Hawaii shall be entitled to a trial by a jury impaneled exclusively from persons of any race. Until otherwise provided by the legislature of the Territory, grand juries may be drawn in the manner provided by the Hawaiian statutes for drawing petty juries, and shall sit at such times as the circuit judges of the respective circuits shall direct; the number of grand jurors in each circuit shall be not less than thirteen, and the method of the presentation of cases to said grand jurors shall be prescribed by the supreme court of the Territory of Hawaii. The several circuit courts may subpœna witnesses to appear before the grand jury in like manner as they subpœna witnesses to appear before their respective courts.

DISQUALIFICATION BY RELATIONSHIP, PECUNIARY INTEREST, OR PREVIOUS JUDGMENT.

SEC. 84. That no person shall sit as judge or juror, in any case in which his relative by affinity or by consanguinity within the third degree is interested, either

as a plaintiff or defendant, or in the issue of which the said judge or juror may have, either directly or through such relative, any pecuniary interest. No judge shall sit on an appeal, or new trial, in any case, in which he may have given a previous judgment.

CHAPTER 5.—UNITED STATES OFFICERS.

DELEGATE TO CONGRESS.

SEC. 85. That a Delegate to the House of Representatives of the United States, to serve during each Congress, shall be elected by the voters qualified to vote for members of the house of representatives of the legislature; such Delegate shall possess the qualifications necessary for membership of the senate of the legislature of Hawaii. The times, places, and manner of holding elections shall be as fixed by law. The person having the greatest number of votes shall be declared by the governor duly elected, and a certificate shall be given accordingly. Every such Delegate shall have a seat in the House of Representatives, with the right of debate, but not of voting.

FEDERAL COURT.

SEC. 86. That there shall be established in said Territory a district court to consist of one judge, who shall reside therein and be called the district judge. The President of the United States, by and with the advice and consent of the Senate of the United States, shall appoint a district judge, a district attorney, and a marshal of the United States for the said district, and said judge, attorney, and marshal shall hold office for six years unless sooner removed by the President. Said court shall have, in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction

of all cases cognizable in a circuit court of the United States, and shall proceed therein in the same manner as a circuit court; and said judge, district attorney, and marshal shall have and exercise in the Territory of Hawaii all the powers conferred by the laws of the United States upon the judges, district attorneys, and marshals of district and circuit courts of the United States. Writs of error and appeals from said district court shall be had and allowed to the circuit court of appeals in the ninth judicial circuit in the same manner as writs of error and appeals are allowed from circuit courts to circuit courts of appeals as provided by law, and the laws of the United States relating to juries and jury trials shall be applicable to said district court. The laws of the United States relating to appeals, writs of error, removal of causes, and other matters and proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the courts of the United States and the courts of the Territory of Hawaii. Regular terms of said court shall be held at Honolulu on the second Monday in April and October and at Hilo on the last Wednesday in January of each year; and special terms may be held at such times and places in said district as the said judge may deem expedient. The said district judge shall appoint a clerk for said court at a salary of three thousand dollars per annum, and shall appoint a reporter of said court at a salary of twelve hundred dollars per annum.

INTERNAL-REVENUE DISTRICT.

SEC. 87. *That the Territory of Hawaii shall constitute a district for the collection of the internal revenue of the*

United States, with a collector, whose office shall be at Honolulu, and deputy collectors at such other places in the several islands as the Secretary of the Treasury shall direct.

CUSTOMS DISTRICT.

SEC. 88. *That the Territory of Hawaii shall comprise a customs district of the United States, with ports of entry and delivery at Honolulu, Hilo, Mahukona, and Kahului.*

CHAPTER 6.—MISCELLANEOUS.

REVENUES FROM WHARVES.

SEC. 89. That until further provision is made by Congress the wharves and landings constructed or controlled by the Republic of Hawaii on any seacoast, bay, roadstead, or harbor shall remain under the control of the government of the Territory of Hawaii, which shall receive and enjoy all revenues derived therefrom, on condition that said property shall be kept in good condition for the use and convenience of commerce, but no tolls or charges shall be made by the government of the Territory of Hawaii for the use of any such property by the United States, or by any vessel of war, tug, revenue cutter, or other boat or transport in the service of the United States.

SEC. 90. That Hawaiian postage stamps, postal cards, and stamped envelopes at the post-offices of the Hawaiian Islands when this act takes effect shall not be sold, but, together with those that shall thereafter be received at such offices as herein provided, shall be canceled under the direction of the Postmaster-General of the United States; those previously sold and uncanceled shall, if presented at such offices within six months after this act takes effect, be received at their face value in exchange for postage stamps, postal cards,

and stamped envelopes of the United States of the same aggregate face value and, so far as may be, of such denominations as desired.

SEC. 91. That the public property ceded and transferred to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July seventh, eighteen hundred and ninety-eight, shall be and remain in the possession, use, and control of the government of the Territory of Hawaii, and shall be maintained, managed, and cared for by it, at its own expense, until otherwise provided for by Congress, or taken for the uses and purposes of the United States by direction of the President or of the governor of Hawaii. And all moneys in the Hawaiian treasury, and all the revenues and other property acquired by the Republic of Hawaii since said cession shall be and remain the property of the Territory of Hawaii.

SEC. 92. That the following officers shall receive the following annual salaries, to be paid by the United States: The governor, five thousand dollars; the secretary of the Territory, three thousand dollars; the chief justice of the supreme court of the Territory, five thousand five hundred dollars, and the associate justices of the supreme court, five thousand dollars each, and the judges of the circuit courts, three thousand dollars each. The salaries of the said chief justice and the associate justices of the supreme court, and the judges of the circuit courts as above provided, shall be paid by the United States; the United States district judge, five thousand dollars; the United States marshal, two thousand five hundred dollars; the United States district attorney, three thousand dollars. And the governor shall receive annually, in addition to his salary, the sum of five

hundred dollars for stationery, postage, and incidentals; also his traveling expenses while absent from the capital on official business, and the sum of two thousand dollars annually for his private secretary.

IMPORTS FROM HAWAII INTO THE UNITED STATES.

SEC. 93. *That imports from any of the Hawaiian Islands, into any State or any other Territory of the United States, of any dutiable articles not the growth, production, or manufacture of said islands, and imported into them from any foreign country after July seventh, eighteen hundred and ninety-eight, and before this act takes effect, shall pay the same duties that are imposed on the same articles when imported into the United States from any foreign country.*

INVESTIGATION OF FISHERIES.

SEC. 94. That the Commissioner of Fish and Fisheries of the United States is empowered and required to examine into the entire subject of fisheries and the laws relating to the fishing rights in the Territory of Hawaii, and report to the President touching the same, and to recommend such changes in said laws as he shall see fit.

REPEAL OF LAWS CONFERRING EXCLUSIVE FISHING RIGHTS.

SEC. 95. That all laws of the Republic of Hawaii which confer exclusive fishing rights upon any person or persons are hereby repealed, and all fisheries in the sea waters of the Territory of Hawaii not included in any fish pond or artificial inclosure shall be free to all citizens of the United States, subject, however, to vested rights; but no such vested right shall be valid after three years from the taking effect of this act, unless established as hereinafter provided.

PROCEEDINGS FOR OPENING FISHERIES TO CITIZENS.

SEC. 96. That any person who claims a private right to any such fishery shall, within two years after the taking effect of this act, file his petition in a circuit court of the Territory of Hawaii, setting forth his claim to such fishing right, service of which petition shall be made upon the attorney-general, who shall conduct the case for the Territory, and such case shall be conducted as an ordinary action at law.

That if such fishing right be established, the attorney-general of the Territory of Hawaii may proceed, in such manner as may be provided by law for the condemnation of property for public use, to condemn such private right of fishing to the use of the citizens of the United States upon making just compensation, which compensation, when lawfully ascertained, shall be paid out of any money in the treasury of the Territory of Hawaii not otherwise appropriated.

QUARANTINE.

SEC. 97. That quarantine stations shall be established at such places in the Territory of Hawaii as the Supervising Surgeon-General of the Marine-Hospital Service of the United States shall direct, and the quarantine regulations for said islands relating to the importation of diseases from other countries shall be under the control of the Government of the United States. The quarantine station and grounds at the harbor of Honolulu, together with all the public property belonging to that service, shall be transferred to the Marine-Hospital Service of the United States, and said quarantine grounds shall continue to be so used and employed until the station is changed to other grounds which may be selected by order of the Secretary of the Treasury.

The health laws of the government of Hawaii relating to the harbor of Honolulu and other harbors and inlets from the sea and to the internal control of the health of the islands shall remain in the jurisdiction of the government of the Territory of Hawaii, subject to the quarantine laws and regulations of the United States.

SEC. 98. That all vessels carrying Hawaiian registers on the twelfth day of August, eighteen hundred and ninety-eight, and which were owned bona fide by citizens of the United States, or the citizens of Hawaii, together with the following-named vessels claiming Hawaiian register, Star of France, Euterpe, Star of Russia, Falls of Clyde, and Wilscott, shall be entitled to be registered as American vessels, with the benefits and privileges appertaining thereto, and the coasting trade between the islands aforesaid and any other portion of the United States, shall be regulated in accordance with the provisions of law applicable to such trade between any two great coasting districts.

SEC. 99. That the portion of the public domain heretofore known as Crown land is hereby declared to have been, on the twelfth day of August, eighteen hundred and ninety-eight, and prior thereto, the property of the Hawaiian Government, and to be free and clear from any trust of or concerning the same, and from all claim of any nature whatsoever, upon the rents, issues, and profits thereof. It shall be subject to alienation and other uses as may be provided by law.

SEC. 100. That for the purposes of naturalization under the laws of the United States residence in the Hawaiian Islands prior to the taking effect of this act shall be deemed equivalent to residence in the United States and in the Territory of Hawaii, and the requirement of a previous declaration of intention to become a citizen of the United States and to renounce former

allegiance shall not apply to persons who have resided in said islands at least five years prior to the taking effect of this act; but all other provisions of the laws of the United States relating to naturalization shall, so far as applicable, apply to persons in the said islands.

SEC. 101. That Chinese in the Hawaiian Islands when this act takes effect may within one year thereafter obtain certificates of residence as required by "An act to prohibit the coming of Chinese persons into the United States," approved May fifth, eighteen hundred and ninety-two, as amended by an act approved November third, eighteen hundred and ninety-three, entitled "An act to amend an act entitled 'An act to prohibit the coming of Chinese persons into the United States,' approved May fifth, eighteen hundred and ninety-two," and until the expiration of said year shall not be deemed to be unlawfully in the United States if found therein without such certificates: *Provided, however, That no Chinese laborer, whether he shall hold such certificate or not, shall be allowed to enter any State, Territory, or District of the United States from the Hawaiian Islands*

SEC. 102. That the laws of Hawaii relating to the establishment and conduct of any postal savings bank or institution are hereby abolished. And the Secretary of the Treasury, in the execution of the agreement of the United States as expressed in an act entitled "Joint Resolution to provide for annexing the Hawaiian Islands to the United States," approved July seventh, eighteen hundred and ninety-eight, shall pay the amounts on deposit in the Hawaiian Postal Savings Bank to the persons entitled thereto, according to their respective rights, and he shall make all needful orders, rules, and regulations for paying such persons and for notifying such persons to present their demands for

payment. So much money as is necessary to pay said demands is hereby appropriated out of any money in the Treasury not otherwise appropriated, to be available on and after the first day of July, nineteen hundred, when such payments shall begin, and none of said demands shall bear interest after said date, and no deposit shall be made in said bank after said date. Said demands of such persons shall be certified to by the chief executive of Hawaii as being genuine and due to the persons presenting the same, and his certificate shall be sealed with the official seal of the Territory, and countersigned by its secretary, and shall be approved by the Secretary of the Interior, who shall draw his warrant for the amount due upon the Treasurer of the United States, and when the same are so paid no further liabilities shall exist in respect of the same against the governments of the United States or of Hawaii.

SEC. 103. That any money of the Hawaiian Postal Savings Bank that shall remain unpaid to the persons entitled thereto on the first day of July, nineteen hundred and one, and any assets of said bank shall be turned over by the government of Hawaii to the Treasurer of the United States, and the Secretary of the Treasury shall cause an account to be stated, as of said date, between such government of Hawaii and the United States in respect to said Hawaiian Postal Savings Bank.

SEC. 104. *This act shall take effect forty-five days from and after the date of the approval thereof*, excepting only as to section fifty-two, relating to appropriations, which shall take effect upon such approval.

Approved, April 30, 1900.

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